



Robert N. Meltzer  
Attorney At Law

P.O. Box 1459  
Framingham, MA 01701  
508.872.7116  
robmeltzer@aol.com

4. This Court has stayed discovery as to the claims policies of USF & G. In so doing, the Court has prevented the Plaintiff from conducting discovery on a vital point for this Opposition, and so this affidavit is submitted pursuant to F.R.C.P. 56(f).

5. In order to understand the extent of Lovett-Silverman's conduct, this Court requires an understanding of how dramatically this claim was mishandled when compared to claims involving similar projects during the same time frame.

6. In the Plaintiff's Mandatory Disclosures, the Plaintiff has identified a project known as Hull High School, and the Plaintiff has identified witnesses to that project. Like the case at bar, the Hull High School project involved Jackson Construction, a project failure in 2005, USF & G as the Surety and Hermes, Netburn as Surety counsel. Plaintiff's counsel has been involved in a number of Jackson cases similar to both Hull High School and Shrewsbury Middle School. I have attached as Exhibit F several exhibits relevant to Hull High School. The first is the Verified Complaint for a subcontractor on that project, filed in August of 2005. The second is the ratification agreement signed in May of 2006. The last is an e-mail between the plaintiff in that case and the construction consultant for USF & G. These documents, which are consistent with the manner in which USF & G handle claims, shows that ratification does occur after the filing of suit, and that communication between the consultant and the plaintiff does occur following suit. These elements demonstrate that Robert Bullock was not telling the truth to Neal Matthews in August of 2005.

6. Discovery into claims practices will also demonstrate how unusual it was for this matter to be removed to this Court, and how unusual it was to have one claim handled serially by four top-drawer law firms. Discovery will also demonstrate how unusual this claim was in the sense of total lack of cooperation and communication toward the claimant, totally unlike the

Robert N. Meltzer  
Attorney At Law

P.O. Box 1459  
Framingham, MA 01701  
508.872.7116  
robmeltzer@aol.com

accepted practice not only in the construction industry, but also amongst the construction law bar.

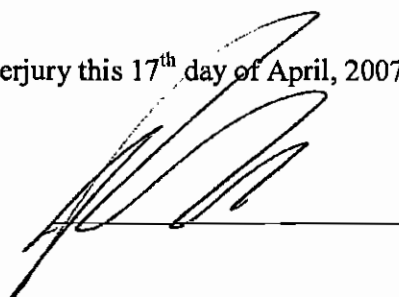
7. When the Plaintiff is permitted to delve into discovery relating to unfair settlement practices, it is expected that Lovett-Silverman's conduct in the case at bar deviates dramatically not only from industry custom and practice, but also deviates dramatically from the Surety's own practices. This particular discovery will also show why Landworks was reasonable in believing that Lovett-Silverman was working toward ratification in August of 2005 and why it was reasonable to believe that Lovett-Silverman was acting honestly toward it.

8. Because of the stay of discovery on the claims practices, the Plaintiff is restricted from providing this evidence to the Court at this time.

9. As further part of the Plaintiff's claim under c. 176D, the Plaintiff would have conducted discovery in to the other 20 lawsuits arising out of the Shrewsbury project. This discovery would have highlighted the process of "banging" and would have provided to this Court further evidence of volitional fraud. The Court should note that the appropriate witnesses have been identified in mandatory disclosures, even though the Plaintiff was barred from conducting this relevant discovery.

10. Because of the stay of discovery on the claims practices, the Plaintiff is restricted from providing this evidence to the Court.

Sworn under the pains and penalties of perjury this 17<sup>th</sup> day of April, 2007.



# EXHIBIT A

1 (Pages 1 to 4)

		Page 3																									
<p>Pages: 1 - 174 Exhibits: 117 - 121</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS CENTRAL DIVISION</p> <p>CA NO. 05-CV-40072FDS</p> <p>LANDWORKS CREATIONS, LLC ) Plaintiff, ) v. ) UNITED STATES FIDELITY AND ) GUARANTY COMPANY and ) LOVETT-SILVERMAN CONSTRUCTION ) CONSULTANTS, INC., ) Defendants. )</p> <p>*****</p> <p>DEPOSITION OF JAMES M. PETERS, JR., called as a Witness by Counsel for the Plaintiff, pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before Ann M. Lavole, Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, taken at Mountain States Law Group, P.O. Box 1459, Framingham, Massachusetts, on Tuesday, February 27, 2007, commencing at 10:20 a.m.</p> <p>*****</p> <p>FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 * (617) 536-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4611</p>		<p>INDEX</p> <table> <thead> <tr> <th>Testimony of:</th> <th>Page</th> </tr> </thead> <tbody> <tr> <td>James M. Peters, Jr.</td> <td></td> </tr> <tr> <td>By Mr. Meltzer</td> <td>4</td> </tr> </tbody> </table> <p>EXHIBITS</p> <table> <thead> <tr> <th>No.</th> <th>Description</th> <th>Page</th> </tr> </thead> <tbody> <tr> <td>117</td> <td>Notice of Taking Deposition of Person or Persons Most Knowledgeable</td> <td>6</td> </tr> <tr> <td>118</td> <td>Notice of Taking Deposition of James M. Peters, Jr.</td> <td>6</td> </tr> <tr> <td>119</td> <td>Business Card</td> <td>71</td> </tr> <tr> <td>120</td> <td>Summons</td> <td>160</td> </tr> <tr> <td>121</td> <td>Plaintiff's First Set of Interrogatories to be Answered by USF&amp;G</td> <td>161</td> </tr> </tbody> </table> <p>*** EXHIBITS RETAINED BY COUNSEL ***</p>		Testimony of:	Page	James M. Peters, Jr.		By Mr. Meltzer	4	No.	Description	Page	117	Notice of Taking Deposition of Person or Persons Most Knowledgeable	6	118	Notice of Taking Deposition of James M. Peters, Jr.	6	119	Business Card	71	120	Summons	160	121	Plaintiff's First Set of Interrogatories to be Answered by USF&G	161
Testimony of:	Page																										
James M. Peters, Jr.																											
By Mr. Meltzer	4																										
No.	Description	Page																									
117	Notice of Taking Deposition of Person or Persons Most Knowledgeable	6																									
118	Notice of Taking Deposition of James M. Peters, Jr.	6																									
119	Business Card	71																									
120	Summons	160																									
121	Plaintiff's First Set of Interrogatories to be Answered by USF&G	161																									
<p>Page 2</p> <p>APPEARANCES</p> <p>MOUNTAIN STATES LAW GROUP By: Robert N. Meltzer, Esq. P.O. Box 1459 Framingham, Massachusetts 01701 508-872-7116</p> <p>Appearing for the Plaintiff</p> <p>HERMES, NETBURN, O'CONNOR &amp; SPEARING, PC By: Eric C. Hipp, Esq. 265 Franklin Street Seventh Floor Boston, Massachusetts 02110 617-210-7750 Appearing for United States Fidelity and Guaranty</p> <p>DONOVAN HATEM, LLP By: Marianne E. Brown, Esq. World Trade Center East Two Seaport Lane Boston, Massachusetts 02210 617-406-4500 Appearing for Lovett-Silverman Construction Consultants, Inc.</p>		<p>Page 4</p> <p>STIPULATIONS</p> <p>It is stipulated by and between counsel for the respective parties that the deposition transcript will be read and signed by the deponent within thirty (30) days of receipt of the transcript under the pains and penalties of perjury. The filing and notary is hereby waived.</p> <p>It is further agreed that all objections, except as to form of the question and motions to strike are reserved until the time of trial.</p> <p>James M. Peters, Jr., having been satisfactorily identified and duly sworn by the Notary Public, was examined and testified as follows:</p> <p>EXAMINATION</p> <p>BY MR. MELTZER:</p> <p>Q. Can you state your name for the record?</p> <p>A. James Michael Peters, Jr.</p> <p>Q. Mr. Peters, have you ever been deposed</p>																									



14 (Pages 53 to 56)

Page 53	Page 55
<p>1 When did you become involved or first hear</p> <p>2 about the Shrewsbury Middle School claim?</p> <p>3 <b>A. In the general time frame of February 2005.</b></p> <p>4 Q. On that one, who first made you aware of</p> <p>5 that particular project?</p> <p>6 <b>A. I don't recall.</b></p> <p>7 Q. Did you have an understanding, in February</p> <p>8 of 2005, what the status was of the Shrewsbury</p> <p>9 Middle School project?</p> <p>10 <b>A. My understanding was that it was being</b></p> <p>11 <b>completed by Jackson Construction Company pursuant</b></p> <p>12 <b>to the terms of a completion agreement.</b></p> <p>13 Q. Did you bring yourself up to speed with</p> <p>14 what was happening with that project?</p> <p>15 <b>A. Over a period of time.</b></p> <p>16 <b>Yes.</b></p> <p>17 Q. How did you bring yourself up to speed?</p> <p>18 <b>A. I obtained copies of documents that we had</b></p> <p>19 <b>that pertained to the Shrewsbury Middle School</b></p> <p>20 <b>project.</b></p> <p>21 <b>I made some site visits, discussed the</b></p> <p>22 <b>matter with Russ Warner, a member of our</b></p> <p>23 <b>construction engineering group, who had been</b></p> <p>24 <b>involved in the project.</b></p>	<p>1 <b>projects unrelated to Standen.</b></p> <p>2 Q. Which was the other Standen project that</p> <p>3 they were completing?</p> <p>4 <b>A. It was the new highway facility that was</b></p> <p>5 <b>being built for the Town of Westford, Massachusetts.</b></p> <p>6 Q. Do you know how Jackson came to be the</p> <p>7 replacement contractor for that job?</p> <p>8 <b>A. I only have a general understanding.</b></p> <p>9 Q. What's your general understanding?</p> <p>10 <b>A. My general understanding is that at the</b></p> <p>11 <b>time that United States Fidelity and Guaranty</b></p> <p>12 <b>Company was looking for a replacement contractor</b></p> <p>13 <b>that Jackson Construction Company was an existing</b></p> <p>14 <b>bond account of United States Fidelity and Guaranty</b></p> <p>15 <b>Company.</b></p> <p>16 <b>I don't know how their name became</b></p> <p>17 <b>identified but, at some point in time, it had been</b></p> <p>18 <b>identified.</b></p> <p>19 <b>And Tiffany Schaak commenced some</b></p> <p>20 <b>discussions with them that led to a completion</b></p> <p>21 <b>agreement being developed.</b></p> <p>22 Q. Was it known that Jackson was a bond</p> <p>23 account at the time that they were given the</p> <p>24 opportunity to be the completion contractor for</p>
Page 54	Page 56
<p>1 Q. Was Lovett-Silverman involved in the</p> <p>2 project in February of 2005?</p> <p>3 <b>A. No.</b></p> <p>4 <b>I don't think so.</b></p> <p>5 Q. You said that Jackson was finishing the</p> <p>6 project when you first became involved in this</p> <p>7 situation?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Who is Jackson Construction?</p> <p>10 <b>A. Jackson Construction Company was a company</b></p> <p>11 <b>based in Centon, Massachusetts, that was in the</b></p> <p>12 <b>business of undertaking general construction</b></p> <p>13 <b>projects.</b></p> <p>14 Q. They were brought in to complete Standen's</p> <p>15 work on the Shrewsbury Middle School?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Had they completed any other projects for</p> <p>18 your company under performance bond obligations that</p> <p>19 your company held?</p> <p>20 <b>A. They were involved in completing another</b></p> <p>21 <b>construction project that related to the Standen</b></p> <p>22 <b>matter.</b></p> <p>23 <b>I don't recall whether or not they were</b></p> <p>24 <b>involved in completing any other construction</b></p>	<p>1 USF&amp;G on the Standen project?</p> <p>2 <b>A. That's my understanding.</b></p> <p>3 <b>Yes.</b></p> <p>4 Q. Is that something that happens in your</p> <p>5 company of performance obligations; that you'll take</p> <p>6 an existing bond account and retain them as a</p> <p>7 completion contractor?</p> <p>8 <b>A. It does happen from time to time.</b></p> <p>9 <b>Yes.</b></p> <p>10 Q. What other occasions can you recall where</p> <p>11 that's happened?</p> <p>12 <b>A. It occurred in the case of the new highway</b></p> <p>13 <b>facility at Westford, Massachusetts.</b></p> <p>14 Q. Also with Jackson?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Anyone else?</p> <p>17 <b>A. It occurred in connection with the MJ</b></p> <p>18 <b>Paquette matter in New Jersey.</b></p> <p>19 Q. The situation with Jackson, when Jackson as</p> <p>20 an existing bond account became the completion</p> <p>21 contractor on the two Standen projects, do you know</p> <p>22 if anybody made a determination that Jackson's own</p> <p>23 financial stability could handle those completion</p> <p>24 contracts?</p>

15 (Pages 57 to 60)

Page 57	Page 59
<p>1 <b>A. No, I do not.</b></p> <p>2 Q. It is your understanding that Jackson then</p> <p>3 was someone identified by USF&amp;G for this project, to</p> <p>4 complete the Standen project at Shrewsbury Middle</p> <p>5 School?</p> <p>6 <b>A. It's my understanding that the</b></p> <p>7 <b>identification of Jackson as a candidate was done</b></p> <p>8 <b>within United States Fidelity and Guaranty.</b></p> <p>9 <b>Yes.</b></p> <p>10 Q. Do you know if there were any conversations</p> <p>11 with Lovett-Silverman about retaining Jackson on</p> <p>12 that project?</p> <p>13 <b>A. I don't recall.</b></p> <p>14 <b>I don't recall.</b></p> <p>15 Q. Do you know if Lovett-Silverman was</p> <p>16 involved in that selection process of a replacement</p> <p>17 contractor?</p> <p>18 <b>A. I don't remember the specifics of their</b></p> <p>19 <b>involvement.</b></p> <p>20 Q. Have you ever seen a document where your</p> <p>21 company provided a list of potential replacement</p> <p>22 contractors to Lovett-Silverman?</p> <p>23 <b>A. I don't have a recollection of that.</b></p> <p>24 Q. Do you ever recall seeing a document where</p>	<p>1 <b>who drafted it and the development of it, I wasn't</b></p> <p>2 <b>involved.</b></p> <p>3 Q. Have you looked at the document in the last</p> <p>4 year?</p> <p>5 <b>A. I believe so.</b></p> <p>6 <b>Yes.</b></p> <p>7 Q. When have you looked at it?</p> <p>8 <b>A. It's been within the last 12 months.</b></p> <p>9 Q. Do you know why you looked at it?</p> <p>10 <b>A. I don't have that specific recollection.</b></p> <p>11 Q. What does the phrase "ratification" mean to</p> <p>12 you?</p> <p>13 <b>A. My general understanding, as it is used in</b></p> <p>14 <b>our business, is the form of agreement whereby a</b></p> <p>15 <b>subcontractor generally would agree to fulfill the</b></p> <p>16 <b>terms and conditions of its subcontract in an</b></p> <p>17 <b>undertaking where the surety would agree to either</b></p> <p>18 <b>undertake certain payments or certain obligations.</b></p> <p>19 Q. Does that word get used interchangeably</p> <p>20 with a hold agreement?</p> <p>21 <b>A. They do appear to be used somewhat</b></p> <p>22 <b>interchangeably.</b></p> <p>23 <b>Yes.</b></p> <p>24 Q. Could you walk me through a time line -- I</p>
Page 58	Page 60
<p>1 your company provided a list of replacement</p> <p>2 contractors that had been identified to the Town of</p> <p>3 Shrewsbury?</p> <p>4 <b>A. I don't recall.</b></p> <p>5 Q. When your company brings in a replacement</p> <p>6 contractor, like Jackson, is there a formal</p> <p>7 agreement signed between your company and the</p> <p>8 replacement contractor?</p> <p>9 <b>A. I would say that, as a matter of general</b></p> <p>10 <b>practice, that usually happens.</b></p> <p>11 <b>Yes.</b></p> <p>12 Q. Is it a form agreement that's generally</p> <p>13 used?</p> <p>14 <b>A. There are some samples of agreements, but</b></p> <p>15 <b>they're not universally used or required.</b></p> <p>16 Q. Do you know, with regard to the Jackson</p> <p>17 agreement, who prepared that agreement?</p> <p>18 <b>MR. HIPP: Objection as to form.</b></p> <p>19 <b>Which Jackson agreement are you referring?</b></p> <p>20 <b>MR. MELTZER: We're talking about</b></p> <p>21 <b>the agreement to complete the work on the Shrewsbury</b></p> <p>22 <b>Middle School.</b></p> <p>23 <b>A. I can only comment that Tiffany Schaak was</b></p> <p>24 <b>involved in the process. But, as to specifically</b></p>	<p>1 realize you were not personally involved with this</p> <p>2 from the moment of failure on the Standen/Shrewsbury</p> <p>3 project -- but the time line as it transpired from</p> <p>4 the failure of Standen until the time the work was</p> <p>5 back up and running under Jackson, how that would</p> <p>6 all unfold?</p> <p>7 <b>A. Is this with respect to Shrewsbury?</b></p> <p>8 <b>Q. Yes.</b></p> <p>9 <b>A. I have a general recollection of how</b></p> <p>10 <b>Standen got into difficulty in the spring of 2005</b></p> <p>11 <b>and that Jackson became involved within a relatively</b></p> <p>12 <b>short period of time thereafter.</b></p> <p>13 Q. 2005 or 2004?</p> <p>14 <b>A. I'm sorry. 2004.</b></p> <p>15 <b>Yes. Spring of 2004.</b></p> <p>16 Q. At what point would Lovett-Silverman have</p> <p>17 been brought in on the Shrewsbury Middle School</p> <p>18 project?</p> <p>19 <b>A. I don't have a specific recollection.</b></p> <p>20 Q. They'd have been brought in before Jackson</p> <p>21 was on the job?</p> <p>22 <b>A. I could only say that I have a general</b></p> <p>23 <b>understanding that they were involved in issues that</b></p> <p>24 <b>followed Standen's default, but I don't recall</b></p>

16 (Pages 61 to 64)

Page 61	Page 63
<p>1 specifically when their responsibilities commenced.</p> <p>2 Q. If we had Standen failing, generally in the</p> <p>3 spring of '04, and we know there is some kind of</p> <p>4 document signed between your company and Jackson as</p> <p>5 a replacement contractor, did Lovett-Silverman come</p> <p>6 between the failure of Standen and the execution of</p> <p>7 the agreement with Jackson?</p> <p>8 A. I don't recall when the agreement with</p> <p>9 Lovett-Silverman was executed.</p> <p>10 Q. At some point would there have been a</p> <p>11 process of ratifying the subcontractors on the</p> <p>12 Shrewsbury Middle School project?</p> <p>13 A. Following the --</p> <p>14 Q. Standen defaulting.</p> <p>15 A. Yes.</p> <p>16 Q. Who would have been involved in the</p> <p>17 ratification process?</p> <p>18 A. My general recollection is that Tiffany</p> <p>19 Schaak and Jeremy Medeiros were involved. I have a</p> <p>20 general understanding that representatives of</p> <p>21 Lovett-Silverman would have been involved.</p> <p>22 And, to one extent or another, Russ Warner</p> <p>23 would have had involvement in that process.</p> <p>24 Q. When the replacement contractor was brought</p>	<p>1 Which checkbook, which company would be the</p> <p>2 checks that Jackson would receive or the replacement</p> <p>3 contractor would generally receive for Shrewsbury</p> <p>4 Middle School?</p> <p>5 A. In the case of the Shrewsbury Middle</p> <p>6 School, payments made to Jackson were made by United</p> <p>7 States Fidelity and Guaranty Company.</p> <p>8 Q. Was the Town of Shrewsbury at all involved</p> <p>9 in the selection of Jackson as a replacement</p> <p>10 contractor?</p> <p>11 A. I don't have any information concerning</p> <p>12 whether they were involved or not.</p> <p>13 Q. Had you ever heard that they were involved?</p> <p>14 A. No.</p> <p>15 Q. Have you ever heard that their opinion was</p> <p>16 solicited on the subject of bringing Jackson in on</p> <p>17 that project?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you know if at all the town was involved</p> <p>20 in the ratification process following the failure of</p> <p>21 Standen on the subcontractors?</p> <p>22 A. Not that I'm aware of.</p> <p>23 No.</p> <p>24 Q. Do you recall ever seeing any documentation</p>
Page 62	Page 64
<p>1 in on a project like this, following a performance</p> <p>2 bond obligation, would the replacement contractor</p> <p>3 also sign a contract of any kind with the warding</p> <p>4 authority; in this case, the Town of Shrewsbury?</p> <p>5 A. The circumstances would vary in each of</p> <p>6 these instances.</p> <p>7 In the case of the Shrewsbury Middle</p> <p>8 School, it's my recollection that Jackson did not</p> <p>9 sign an agreement directly with the Town of</p> <p>10 Shrewsbury to the best of my knowledge.</p> <p>11 Q. They had an agreement with Travelers or</p> <p>12 some portion of Travelers as the replacement</p> <p>13 contractor?</p> <p>14 A. That's correct.</p> <p>15 Q. Who at Jackson submitted requisitions and</p> <p>16 monthly bills to when they receive them from</p> <p>17 subcontractors?</p> <p>18 A. My general recollection is that there was a</p> <p>19 process of exchanging pencil copies of the</p> <p>20 applications with the Shrewsbury architect and that</p> <p>21 copies of those requisitions would generally be</p> <p>22 shared with the United States Fidelity and Guaranty</p> <p>23 Company.</p> <p>24 Q. Who would actually write the checks?</p>	<p>1 from the Town of Shrewsbury to the surety</p> <p>2 identifying specific subcontractors that the town</p> <p>3 would prefer not be ratified following the failure</p> <p>4 of Standen?</p> <p>5 A. No.</p> <p>6 Q. Do you recall seeing any documents</p> <p>7 submitted to your company from the project architect</p> <p>8 identifying certain subcontractors that should not</p> <p>9 be ratified on this particular project?</p> <p>10 A. No.</p> <p>11 Q. Have you ever seen a situation where either</p> <p>12 an awarding authority or an architect, following the</p> <p>13 failure of a general contractor, requested that</p> <p>14 specific contractors not be retained?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Do you recall seeing any documentation from</p> <p>17 Lovett-Silverman to your company identifying</p> <p>18 specific subcontractors that in Lovett-Silverman's</p> <p>19 opinion should not be ratified after the Standen</p> <p>20 failure?</p> <p>21 A. No.</p> <p>22 Q. I'm going to show you a document that we've</p> <p>23 marked as Exhibit 78 prior and ask if you've ever</p> <p>24 seen that document?</p>



19 (Pages 73 to 76)

Page 73	Page 75
<p>1 company?</p> <p>2 <b>A. Not that I understand. No.</b></p> <p>3 Q. Did it come as a surprise to you personally</p> <p>4 when Jackson failed?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. How did you learn that Jackson was failing?</p> <p>7 <b>A. By observation of their performance on the</b></p> <p>8 <b>Shrewsbury project and by virtue of the</b></p> <p>9 <b>notifications, which we had received from various</b></p> <p>10 <b>subcontractors or suppliers, concerning their</b></p> <p>11 <b>failure to make timely payments.</b></p> <p>12 Q. How many notifications did the surety</p> <p>13 receive about failure to make payments?</p> <p>14 <b>A. I don't recall.</b></p> <p>15 Q. Was there a particular individual at your</p> <p>16 company that was assigned the Jackson matters?</p> <p>17 <b>A. In what capacity?</b></p> <p>18 Q. Handling claims that were coming in during</p> <p>19 that time frame, before their failure in 2005?</p> <p>20 <b>A. With respect to the Standen matter?</b></p> <p>21 Q. Matters in general.</p> <p>22 <b>A. I guess I could respond to your question</b></p> <p>23 <b>this way: To the extent that there were claims that</b></p> <p>24 <b>pertained to Jackson and its role on the two Standen</b></p>	<p>1 <b>to be in default and terminating their contracts on</b></p> <p>2 <b>Shrewsbury and Westford.</b></p> <p>3 Q. Do you have any personal knowledge how many</p> <p>4 bonded jobs Jackson was performing at the time of</p> <p>5 their failure, bonded by your company?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Do you have any range?</p> <p>8 <b>A. No.</b></p> <p>9 Q. You said that you had observed in their</p> <p>10 performance that they were failing.</p> <p>11 What did you observe?</p> <p>12 <b>A. The general observation was that the</b></p> <p>13 <b>progress on the completion of the Shrewsbury and the</b></p> <p>14 <b>Westford projects had slowed and the project owner</b></p> <p>15 <b>increasingly was expressing concerns about their</b></p> <p>16 <b>failure to complete the project.</b></p> <p>17 Q. The project owner being Town of Shrewsbury</p> <p>18 in our case?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Who would the project owner be complaining</p> <p>21 to or expressing discontent to or concerns to your</p> <p>22 company?</p> <p>23 <b>A. To me.</b></p> <p>24 Q. Who would you be in contact with from the</p>
Page 74	Page 76
<p>1 projects, I would have been the primary person.</p> <p>2 <b>And to the extent that there were claims</b></p> <p>3 <b>that were presented, that pertained to other</b></p> <p>4 <b>projects of Jackson, that there would be others</b></p> <p>5 <b>within the Traversers bond operations that would have</b></p> <p>6 <b>handled those matters.</b></p> <p>7 Q. Do you know who those individuals would</p> <p>8 have been?</p> <p>9 <b>A. I have a recollection that they would have</b></p> <p>10 <b>included Tom McAuley and Gordon Patterson.</b></p> <p>11 Q. Would there be any kind of regular</p> <p>12 communication between you and either of those two</p> <p>13 individuals, Gordon and Tom, about Jackson and the</p> <p>14 impact of their failure on each other's projects?</p> <p>15 <b>A. I wouldn't characterize it as regular</b></p> <p>16 <b>communication.</b></p> <p>17 <b>No.</b></p> <p>18 Q. Would there be an informal group within</p> <p>19 your company of people that were dealing in various</p> <p>20 ways with Jackson that would be addressing a</p> <p>21 cross-disciplinary ad hoc committee on Jackson's</p> <p>22 failure?</p> <p>23 <b>A. There was communication between us around</b></p> <p>24 <b>the time that we were considering declaring Jackson</b></p>	<p>1 part of the owner?</p> <p>2 <b>A. The town manager. His name is Dan Morgado.</b></p> <p>3 Q. How often would you talk to Dan Morgado?</p> <p>4 <b>A. I don't have a specific recollection as to</b></p> <p>5 <b>the frequency.</b></p> <p>6 Q. Did you communicate with him by email?</p> <p>7 <b>A. I don't have a specific recollection.</b></p> <p>8 Q. What kind of comments was he making to you</p> <p>9 about the performance of Jackson?</p> <p>10 <b>A. I just have a general recollection of him</b></p> <p>11 <b>expressing concern about the failure of Jackson to</b></p> <p>12 <b>timely complete the project.</b></p> <p>13 Q. How often were you going down to the</p> <p>14 Shrewsbury Middle School in 2005?</p> <p>15 <b>A. I have a recollection of at least two to</b></p> <p>16 <b>three visits during the spring or summer of 2005.</b></p> <p>17 <b>There might have been more occasions, but I</b></p> <p>18 <b>don't remember. I remember at least on a couple of</b></p> <p>19 <b>occasions being there.</b></p> <p>20 Q. Who would you meet with when you went down</p> <p>21 there?</p> <p>22 <b>A. I recall an initial meeting that just</b></p> <p>23 <b>included Russ Warner. There may have been others</b></p> <p>24 <b>but none come to mind.</b></p>

28 (Pages 109 to 112)

Page 109	Page 111
<p>1 matter.</p> <p>2 Q. Did you ever discuss the Hull High School</p> <p>3 matter with Gordon Patterson?</p> <p>4 A. My only recollection is that there was a</p> <p>5 storm and some severe damage to the roof that</p> <p>6 occurred at some point in that general time frame.</p> <p>7 I was wasn't involved in the specifics of</p> <p>8 the claim handler.</p> <p>9 Q. I want to clarify: There was no particular</p> <p>10 written policy that stated that Lovett-Silverman was</p> <p>11 barred from communicating with Landworks as a matter</p> <p>12 of surety policy?</p> <p>13 A. Not that I'm aware of.</p> <p>14 No.</p> <p>15 Q. Did you ever tell anybody at</p> <p>16 Lovett-Silverman that a subcontractor could not be</p> <p>17 ratified while litigation was in process?</p> <p>18 A. No. I don't have a specific recollection</p> <p>19 of that.</p> <p>20 Q. Are you aware of any instances in which a</p> <p>21 subcontractor was ratified even though litigation</p> <p>22 had already commenced against the surety?</p> <p>23 A. I have a general recollection that</p> <p>24 arrangements were made that led to a ratification</p>	<p>1 Q. Did you ever speak to anybody at Jackson</p> <p>2 about the quality of Landworks work?</p> <p>3 A. I have a general recollection of having had</p> <p>4 some conversations with Bob Barton about Landworks,</p> <p>5 but I don't recall the substance of whether the</p> <p>6 substance of those conversations focused on quality</p> <p>7 of the work.</p> <p>8 Q. Do you recall in the spring or summer of</p> <p>9 2005 hearing anybody, in any capacity, specifically</p> <p>10 identifying Landworks as a problem subcontractor?</p> <p>11 A. I have a general recollection of having had</p> <p>12 some conversations with Bob Barton about Landworks</p> <p>13 not having a continuing presence on the project and</p> <p>14 that there were some payment issues.</p> <p>15 Q. Was that unique to Landworks on this job?</p> <p>16 A. The issue of continuing presence was not</p> <p>17 something that was necessarily shared by a number of</p> <p>18 other subcontractors.</p> <p>19 The issue of some payment issues was</p> <p>20 something that was more widespread.</p> <p>21 Q. Amongst numerous subcontractors?</p> <p>22 A. Yes.</p> <p>23 Q. Would having payment issues with Jackson a</p> <p>24 bar to ratification following a default of Jackson?</p>
Page 110	Page 112
<p>1 that included the reaching of a resolution of the</p> <p>2 litigation.</p> <p>3 Q. Was there any kind of written policy that</p> <p>4 stated once litigation commenced the surety could</p> <p>5 not consider that party for ratification?</p> <p>6 A. Not that I'm aware of.</p> <p>7 No.</p> <p>8 Q. Do you recall ever attending any kind of</p> <p>9 event sponsored by the surety in which that was</p> <p>10 stated to be the company policy?</p> <p>11 A. No.</p> <p>12 Q. When you first became involved in the</p> <p>13 project at the Shrewsbury Middle School, in the</p> <p>14 spring of 2005, did anybody from the town</p> <p>15 specifically state any reservations about ratifying</p> <p>16 Landworks?</p> <p>17 A. Not that I recall.</p> <p>18 Q. How about from the architect specifically</p> <p>19 as to Landworks?</p> <p>20 A. Not that I recall.</p> <p>21 Q. How about from CTM?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Waterman Design?</p> <p>24 A. Not that I recall.</p>	<p>1 A. No.</p> <p>2 Q. Was there any kind of policy that stated</p> <p>3 that having a payment problem with a prior</p> <p>4 contractor would constitute a bar to ratification?</p> <p>5 A. No.</p> <p>6 Q. Have you heard of any subcontractors on</p> <p>7 this project who declined to return to the site</p> <p>8 pending payment issues?</p> <p>9 A. Yes. I have a general recollection of</p> <p>10 that.</p> <p>11 Q. Do you know if any subcontractors did not</p> <p>12 return or declined to come to the job because of</p> <p>13 payment issues?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know who those were?</p> <p>16 A. I have a general recollection that Century</p> <p>17 Drywall was an instance where there was some payment</p> <p>18 issues, and we were unable to realize a</p> <p>19 reconciliation of their claims and their</p> <p>20 subcontract.</p> <p>21 Q. Any others?</p> <p>22 A. I don't recall specific names.</p> <p>23 Q. How many subcontractors on the Shrewsbury</p> <p>24 Middle School have filed suit against USF&amp;G seeking</p>

29 (Pages 113 to 116)

Page 113	Page 115
<p>1 payment under the bond?</p> <p>2 A. A little bit over 20.</p> <p>3 Q. Have filed suit?</p> <p>4 A. Yes.</p> <p>5 Q. In Shrewsbury Middle School or in general?</p> <p>6 A. In connection with the Shrewsbury Middle</p> <p>7 School.</p> <p>8 That would include in connection with</p> <p>9 Standen's default and Jackson's default.</p> <p>10 Q. Can you identify as many of those as you</p> <p>11 can and whether they are Standen or Jackson</p> <p>12 defaults?</p> <p>13 A. I don't know that I would parse them out as</p> <p>14 between Standen and Jackson.</p> <p>15 Q. Can you do them by trade?</p> <p>16 A. Coughlin Electric.</p> <p>17 Q. They were the electrician, Division 15, on</p> <p>18 this project?</p> <p>19 A. They were the electrician.</p> <p>20 Q. They actually filed suit?</p> <p>21 A. Yes. That's my recollection.</p> <p>22 Q. Who else?</p> <p>23 A. Escoa.</p> <p>24 Q. Also an electrician?</p>	<p>1 Q. And that's in suit?</p> <p>2 A. It was.</p> <p>3 Well, I'm not certain of the current status</p> <p>4 of that.</p> <p>5 Q. Who else?</p> <p>6 A. I don't recall any other names.</p> <p>7 Q. How about K&amp;K?</p> <p>8 A. The name sounds familiar, but I can't put</p> <p>9 it into context.</p> <p>10 Q. How about KMD?</p> <p>11 A. I recall them as a subcontractor. I don't</p> <p>12 recall that there was litigation involved.</p> <p>13 Q. How about a floor subcontractor?</p> <p>14 A. I don't recall if there was litigation</p> <p>15 involving a flooring subcontractor.</p> <p>16 Q. How about Steelco?</p> <p>17 A. Steelco did bring an action.</p> <p>18 Q. Is there others you can't recall?</p> <p>19 A. I presume so. Yes.</p> <p>20 Q. Were all these matters being presented by</p> <p>21 the same counsel for USF&amp;G?</p> <p>22 A. No.</p> <p>23 Q. What law firms were being used to defend</p> <p>24 these matters?</p>
Page 114	Page 116
<p>1 A. Yes.</p> <p>2 Q. They filed suit?</p> <p>3 A. Yes.</p> <p>4 Q. Who else?</p> <p>5 A. Landworks.</p> <p>6 Q. Who else?</p> <p>7 A. Kittridge Equipment.</p> <p>8 Q. Do you know what they provided?</p> <p>9 A. Kitchen equipment. Cafeterias.</p> <p>10 Q. They filed suit?</p> <p>11 A. Yes.</p> <p>12 Q. Who else?</p> <p>13 A. Century Drywall.</p> <p>14 Q. That's in suit in Worcester now; correct?</p> <p>15 A. That's in suit. I'm not certain of the</p> <p>16 venue.</p> <p>17 Q. Who else?</p> <p>18 A. Daddario.</p> <p>19 Q. Plumbing?</p> <p>20 A. I don't recall their scope.</p> <p>21 Q. Did they also file suit?</p> <p>22 A. Yes.</p> <p>23 Q. Who else?</p> <p>24 A. Allstate Steel.</p>	<p>1 A. Some were being represented by Hermes,</p> <p>2 Netburn, O'Connor, and Spearling.</p> <p>3 Some were represented by Little, Medeiros,</p> <p>4 Kinder, Pulman, and Whitney.</p> <p>5 At some point Hinshaw &amp; Culbertson</p> <p>6 represented us in one or more of those actions.</p> <p>7 Q. Anyone else?</p> <p>8 A. None that come to mind.</p> <p>9 Q. Is Little Medeiros still doing work for the</p> <p>10 surety on defending cases involving Massachusetts</p> <p>11 public school projects?</p> <p>12 A. Yes.</p> <p>13 Q. How about Hinshaw Culbertson?</p> <p>14 A. Does your question deal with active cases?</p> <p>15 Q. Yes. Active cases.</p> <p>16 A. I don't have a recollection of any active</p> <p>17 cases that they have.</p> <p>18 Q. Little Medeiros still has active cases?</p> <p>19 A. In connection with the Standen matter?</p> <p>20 Q. How about in general?</p> <p>21 Are they still representing USF&amp;G in</p> <p>22 Massachusetts?</p> <p>23 A. Hinshaw Culbertson?</p> <p>24 Q. Yes.</p>



30 (Pages 117 to 120)

Page 117	Page 119
<p>1 <b>A. Yes, they are.</b></p> <p>2 Q. Little Medeiros is still representing USF&amp;G</p> <p>3 in Massachusetts as well?</p> <p>4 <b>A. In certain Standen-related matters.</b></p> <p>5 Q. Who makes a determination of which law firm</p> <p>6 is representing a surety in any particular case in</p> <p>7 the Commonwealth?</p> <p>8 <b>A. The determination is generally made by the</b></p> <p>9 <b>assigned claim manager, manager or attorney, as the</b></p> <p>10 <b>case may be.</b></p> <p>11 Q. At the Shrewsbury Middle School who would</p> <p>12 have made that determination?</p> <p>13 <b>A. At what time?</b></p> <p>14 Q. In 2005.</p> <p>15 <b>A. During the time that I was involved, I</b></p> <p>16 <b>would have been involved in the counsel selection</b></p> <p>17 <b>decisions.</b></p> <p>18 Q. Would you have been involved in the</p> <p>19 determination to send this matter to Little Medeiros</p> <p>20 when the case was filed by Landworks?</p> <p>21 <b>A. No, I was not.</b></p> <p>22 Q. Were you involved when the matter was</p> <p>23 shifted to Cetrulo &amp; Capone?</p> <p>24 <b>A. Either Cetrulo &amp; Capone or Hinshaw</b></p>	<p>1 sent over from Cetrulo &amp; Capone to Hinshaw</p> <p>2 Culbertson?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Were you part of that decision to make that</p> <p>5 change?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Why was that change made?</p> <p>8 MR. HIPP: Objection.</p> <p>9 Attorney-client privilege.</p> <p>10 MR. MELTZER: Same motion to</p> <p>11 compel.</p> <p>12 Q. (By Mr. Meltzer) At some point was this</p> <p>13 matter then sent over to Hermes Netburn?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Were you part of that decision to shift</p> <p>16 that matter as well?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Tell me why you made that determination?</p> <p>19 MR. HIPP: Objection based on</p> <p>20 attorney-client privilege.</p> <p>21 MR. MELTZER: Move to compel that</p> <p>22 one as well.</p> <p>23 Q. (By Mr. Meltzer) Would it be common in a</p> <p>24 lawsuit involving the surety in Massachusetts, in</p>
Page 118	Page 120
<p>1 Culbertson. I don't recall when Mr. Carver changed</p> <p>2 firms.</p> <p>3 Q. Do you recall being involved in that</p> <p>4 decision to transfer the matter away from Little</p> <p>5 Medeiros?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Do you know why that determination was</p> <p>8 made?</p> <p>9 MR. HIPP: Objection.</p> <p>10 MR. MELTZER: Are you instructing</p> <p>11 him not to answer?</p> <p>12 MR. HIPP: Yeah. You're getting</p> <p>13 into attorney-client issues.</p> <p>14 MR. MELTZER: If you instruct him</p> <p>15 not to answer, I'll move to compel the answer to</p> <p>16 that.</p> <p>17 Q. (By Mr. Meltzer) Can you tell me why</p> <p>18 Cetrulo &amp; Capone was selected as replacement</p> <p>19 counsel?</p> <p>20 MR. HIPP: Objection for the same</p> <p>21 reason.</p> <p>22 MR. MELTZER: Same motion to</p> <p>23 compel.</p> <p>24 Q. (By Mr. Meltzer) Was this matter ultimately</p>	<p>1 2005, for a case to be handled by four different law</p> <p>2 firms?</p> <p>3 <b>A. I think the answer to that question depends</b></p> <p>4 <b>on the circumstances of the particular case.</b></p> <p>5 Q. On the Shrewsbury Middle School, how many</p> <p>6 of these cases were handled by four different law</p> <p>7 firms within an eight-month period?</p> <p>8 <b>A. This is the only one that I know of.</b></p> <p>9 Q. Are you aware that this case was originally</p> <p>10 filed in the Worcester Superior Court?</p> <p>11 <b>A. That's my general understanding.</b></p> <p>12 Q. You know that at some point it was removed</p> <p>13 to the U.S. District Court?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Can you tell me why the determination was</p> <p>16 made to move the case to the United States District</p> <p>17 Court?</p> <p>18 MR. HIPP: Objection on the basis</p> <p>19 of attorney-client privilege.</p> <p>20 MR. MELTZER: Move to compel on</p> <p>21 that one as well.</p> <p>22 Q. (By Mr. Meltzer) How many cases involving</p> <p>23 the Shrewsbury Middle School were removed to the</p> <p>24 U.S. District Court?</p>



31 (Pages 121 to 124)

Page 121	Page 123
<p>1 A. I don't recall.</p> <p>2 Q. Can you think of any others involving the</p> <p>3 Shrewsbury Middle School that have been moved to the</p> <p>4 U.S. District Court?</p> <p>5 A. I don't recall.</p> <p>6 (A brief recess was taken.)</p> <p>7 Q. (By Mr. Meltzer) Was there any kind of</p> <p>8 formal policy at the surety that determined how</p> <p>9 counsel was selected to represent the surety in any</p> <p>10 given case?</p> <p>11 A. The decision is wanted to be made by the</p> <p>12 assigned claim attorney or manager.</p> <p>13 Generally, the expectation is that the</p> <p>14 claim attorney or counsel will utilize counsel on</p> <p>15 what we would identify to be our list of panel</p> <p>16 counsel, which are attorneys that are generally</p> <p>17 cleared to represent us.</p> <p>18 But there are some exceptions to that</p> <p>19 general practice.</p> <p>20 Q. Is there any policy to explain why a case</p> <p>21 will be moved from attorney to attorney in the same</p> <p>22 case?</p> <p>23 A. That would be something that would be</p> <p>24 dictated by the claim manager or attorney's</p>	<p>1 site for a number of months.</p> <p>2 The site work, which was the subject of</p> <p>3 their original subcontract responsibilities, was an</p> <p>4 issue that had some urgency associated with it and</p> <p>5 efforts were being made to identify other</p> <p>6 alternatives for completion of that work about the</p> <p>7 same time that Landworks contacted Lovett-Silverman.</p> <p>8 Q. How did you determine that they had been</p> <p>9 absent from the project for a length of time?</p> <p>10 A. That was my general understanding from what</p> <p>11 I recall from discussions with Bob Barton of Jackson</p> <p>12 Construction Company.</p> <p>13 Q. What period of time were those absences</p> <p>14 occurring?</p> <p>15 A. My general understanding is that there had</p> <p>16 not been a presence roughly after the first of the</p> <p>17 year 2005 through the summer months when we issued</p> <p>18 Jackson's default and termination.</p> <p>19 Q. Were there other subcontractors who were</p> <p>20 absent during that time frame; in the spring,</p> <p>21 early-summer of 2005?</p> <p>22 A. I don't recall.</p> <p>23 Q. Have you heard that Landworks did not</p> <p>24 return to the site because of nonpayment of their</p>
Page 122	Page 124
<p>1 evaluation of the particulars of that circumstance.</p> <p>2 Q. Other than the Landworks case, can you</p> <p>3 recall any other cases that you've been involved in,</p> <p>4 in the last two years, that have had four different</p> <p>5 law firms representing the surety within an</p> <p>6 eight-month period?</p> <p>7 A. No.</p> <p>8 Q. Is there any formal policy within the</p> <p>9 surety that explains when a case should be removed</p> <p>10 for a state to a federal court?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Do you know why Landworks was not ratified</p> <p>13 in this case?</p> <p>14 MR. HIPP: Objection as to form.</p> <p>15 I assume you're referring to after the</p> <p>16 Jackson default.</p> <p>17 MR. MELTZER: Yes.</p> <p>18 A. I don't have a specific recollection as to</p> <p>19 why Landworks was not ratified but would respond to</p> <p>20 your question in this way: At the time that we were</p> <p>21 — our consultant, Lovett-Silverman, had been</p> <p>22 contacted by Landworks with an expression of</p> <p>23 interest to become ratified, we had identified them</p> <p>24 as a contractor who had been absent from the project</p>	<p>1 invoices?</p> <p>2 A. I had heard that there were some issues</p> <p>3 with respect to payment. As to why they did not</p> <p>4 return to the site, I don't have a specific</p> <p>5 recollection.</p> <p>6 Q. Had you ever heard that Landworks had left</p> <p>7 the site due to winter conditions?</p> <p>8 A. I don't have that recollection.</p> <p>9 Q. Other than Bob Barton saying there had been</p> <p>10 absences during the time frame from the beginning of</p> <p>11 2005 through the summer, are there any other reasons</p> <p>12 that you've heard why Landworks was not ratified?</p> <p>13 MR. HIPP: Objection as to form.</p> <p>14 A. My general understanding is that they</p> <p>15 hadn't been evident on the project site and, as a</p> <p>16 consequence, their work was not being maintained.</p> <p>17 I had the general understanding that</p> <p>18 Jackson was considering engaging the services of</p> <p>19 another site work contractor in the early part of</p> <p>20 the summer to take up and to complete the work that</p> <p>21 was within Landworks' subcontract.</p> <p>22 Q. Did you ever see any correspondence from</p> <p>23 Landworks, in the spring of 2005, indicating that</p> <p>24 they were ready, willing, and able to return to work</p>

35 (Pages 137 to 140)

Page 137	Page 139
<p>1 <b>A. This is a pleading that was prepared by</b>  2 <b>attorneys.</b>  3 <b>Q. Does that reflect your understanding of</b>  4 <b>what's in the subcontract between Landworks and</b>  5 <b>Standen?</b>  6 <b>A. It's a paraphrase of their subcontract that</b>  7 <b>conforms with my general understanding.</b>  8 <b>Q. Paragraph 10, On or about April 29, 2004,</b>  9 <b>Landworks entered into a subcontract with Jackson.</b>  10 <b>See that reference?</b>  11 <b>A. Yes.</b>  12 <b>Q. When did you first see that subcontract?</b>  13 <b>A. I don't recall.</b>  14 <b>Q. Did you ever discuss the terms of that</b>  15 <b>subcontract with Jackson, anybody at Jackson?</b>  16 <b>A. I don't recall.</b>  17 <b>Q. Do you recall ever having a conversation</b>  18 <b>with anybody from Jackson in which you inquired</b>  19 <b>about the scope of Landworks' responsibilities on</b>  20 <b>this project?</b>  21 <b>A. I don't recall.</b>  22 <b>Q. Did you ever have that kind of conversation</b>  23 <b>with anybody from Standen?</b>  24 <b>A. No.</b></p>	<p>1 attorney-client privilege.  2 You can answer if it's to the extent of  3 your own personal knowledge and not attorney-client  4 communications.  5 <b>A. The information would have come to me</b>  6 <b>through our attorneys and would require me to</b>  7 <b>disclose information of that nature.</b>  8 <b>Q. Are you aware of any statutory provisions</b>  9 <b>in Massachusetts law that limit when site work can</b>  10 <b>be performed in the Commonwealth due to seasonal</b>  11 <b>constraints?</b>  12 <b>MR. HIPP: Same objection on</b>  13 <b>attorney-client privilege.</b>  14 You can answer to the extent you have your  15 own personal knowledge.  16 <b>A. I don't have a recollection of a</b>  17 <b>Commonwealth of Massachusetts statute.</b>  18 <b>No.</b>  19 <b>Q. Are you aware of any industry standards</b>  20 <b>that dictate when certain site work can be performed</b>  21 <b>in the Commonwealth of Massachusetts due to seasonal</b>  22 <b>restraints?</b>  23 <b>A. I'm not aware of a specific industry</b>  24 <b>standard.</b></p>
Page 138	Page 140
<p>1 <b>Q. Did you ever instruct anybody at</b>  2 <b>Lovett-Silverman to have a conversation with Jackson</b>  3 <b>to ascertain Jackson's understanding of the</b>  4 <b>subcontract?</b>  5 <b>A. I don't recall.</b>  6 <b>Q. During the time frame early-2005 was</b>  7 <b>anybody at the surety still in contact with anybody</b>  8 <b>from Standen?</b>  9 <b>A. Repeat the question.</b>  10 <b>(Last question read back.)</b>  11 <b>A. Not other than through counsel.</b>  12 <b>Q. Was any effort made through counsel to</b>  13 <b>ascertain the scope of Landworks' scope with Standen</b>  14 <b>with the Shrewsbury Middle School project?</b>  15 <b>MR. HIPP: Objection on the basis</b>  16 <b>of attorney-client privilege.</b>  17 <b>MR. MELTZER: Move to compel.</b>  18 <b>Q. (By Mr. Meltzer) Moving down to paragraph</b>  19 <b>11, Landworks abandoned its work at the project in</b>  20 <b>the fall of 2004.</b>  21 <b>Did I read that correctly?</b>  22 <b>A. Yes.</b>  23 <b>Q. Tell me what that's based upon?</b>  24 <b>MR. HIPP: Same objection on</b></p>	<p>1 <b>No.</b>  2 <b>Q. How about any ordinance in the Town of</b>  3 <b>Shrewsbury?</b>  4 <b>A. I'm not aware of an ordinance in the Town</b>  5 <b>of Shrewsbury.</b>  6 <b>Q. Have you ever heard the term "winter</b>  7 <b>shutdown"?</b>  8 <b>A. In general terms, yes.</b>  9 <b>Q. What does that mean?</b>  10 <b>A. It would typically refer to activities that</b>  11 <b>were not to be performed due to the reasons that</b>  12 <b>would have to do with the climate.</b>  13 <b>Q. What kind of work?</b>  14 <b>A. Typically exterior work.</b>  15 <b>Q. Site work?</b>  16 <b>A. Yes.</b>  17 <b>Q. Do you know if there was any winter</b>  18 <b>shutdown provisions at the Shrewsbury Middle School</b>  19 <b>project for site work?</b>  20 <b>A. I have a recollection that there was some</b>  21 <b>restrictions on the time period within which seeding</b>  22 <b>activity could be undertaken.</b>  23 <b>Q. How about paving activity?</b>  24 <b>A. I don't have a specific recollection.</b></p>

42 (Pages 165 to 168)

Page 165	Page 167
<p>1 Should we pursue this guy?</p> <p>2 I know you have issues with him.</p> <p>3 Do you recall seeing this email?</p> <p>4 <b>A. I don't have an independent recollection,</b></p> <p>5 <b>other than from this.</b></p> <p>6 Q. As you sit here today, do you know whether</p> <p>7 Russ had issues with the president of Landworks?</p> <p>8 <b>A. The only issues that I'm aware of were the</b></p> <p>9 <b>existence of the litigation.</b></p> <p>10 <b>There may be other issues that were in his</b></p> <p>11 <b>mind, but I would only be speculating.</b></p> <p>12 Q. Did you have any discussions with Russ</p> <p>13 Fuller about what those issues were?</p> <p>14 <b>A. I only have a general recollection of</b></p> <p>15 <b>having discussed this situation with Russ Fuller.</b></p> <p>16 <b>But I don't have a specific recollection of the</b></p> <p>17 <b>particular conversations.</b></p> <p>18 Q. In terms of the issues, plural, as you sit</p> <p>19 here today, even though you're Ccd on this --</p> <p>20 actually, you're a direct recipient -- you don't</p> <p>21 know what that refers to?</p> <p>22 <b>A. The only thing that I would be in a</b></p> <p>23 <b>position to respond to specifically was the</b></p> <p>24 <b>existence of the litigation.</b></p>	<p>1 Do you recall seeing this email?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. When did you first see this email?</p> <p>4 <b>A. I don't know that I could pin a date on it.</b></p> <p>5 <b>My general recollection is that it was a</b></p> <p>6 <b>document that was identified during the course of</b></p> <p>7 <b>discovery of Lovett-Silverman's business records and</b></p> <p>8 <b>it was brought to my attention after that.</b></p> <p>9 Q. You had a chance to read this email?</p> <p>10 <b>A. Yes, I have.</b></p> <p>11 Q. You saw the language at the bottom that</p> <p>12 says, We can try to bang the subs, but I think that</p> <p>13 we can never recover from them what we are spending.</p> <p>14 See that reference?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. In fact, at the top of that paragraph it</p> <p>17 actually talks about site work; correct?</p> <p>18 <b>A. Among other things, yes.</b></p> <p>19 Q. Do you know what it means to bang subs?</p> <p>20 <b>A. I don't know what Mr. Falango meant by</b></p> <p>21 <b>that.</b></p> <p>22 Q. Did you ever call up Al Falango and ask him</p> <p>23 what he meant by it?</p> <p>24 <b>A. I remember having a conversation with him</b></p>
Page 166	Page 168
<p>1 Q. Would you expect your consultants to be</p> <p>2 respectful of subcontractors working on a public</p> <p>3 construction project?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Would it be respectful to refer to the</p> <p>6 president of a subcontractor as "this guy"?</p> <p>7 <b>A. It's a choice of words that I probably</b></p> <p>8 <b>wouldn't use myself, but I don't know that any</b></p> <p>9 <b>disrespect is intended.</b></p> <p>10 Q. Take a look for a moment at No. 58. Same</p> <p>11 question: Looking at that first sentence, is that</p> <p>12 the kind of language you are accustomed to seeing</p> <p>13 for a consultant working for USF&amp;G?</p> <p>14 MR. HIPPE: Objection as to form.</p> <p>15 Which of the emails are you referring?</p> <p>16 MR. MELTZER: I'm referring to the</p> <p>17 top one. It says, Hi, Al. I just got back from my</p> <p>18 F-ing vacation.</p> <p>19 <b>A. That's not something that I would normally</b></p> <p>20 <b>expect to see.</b></p> <p>21 <b>No.</b></p> <p>22 Q. Does that strike you as professional?</p> <p>23 <b>A. Not particularly.</b></p> <p>24 Q. Look at No. 43 for a moment.</p>	<p>1 about it.</p> <p>2 Q. When was that conversation?</p> <p>3 <b>A. After I had seen the email.</b></p> <p>4 Q. Why did you have a conversation with him</p> <p>5 about it?</p> <p>6 <b>A. Because I wanted to understand more clearly</b></p> <p>7 <b>what he was talking about and to express some</b></p> <p>8 <b>disappointment in his choice of words.</b></p> <p>9 Q. Why disappointment?</p> <p>10 <b>A. Because it appears to be the use of slang,</b></p> <p>11 <b>which could be taken out of context.</b></p> <p>12 Q. Did he explain to you what he meant by</p> <p>13 that; we can try to bang the subs?</p> <p>14 <b>A. My understanding was that he was talking</b></p> <p>15 <b>about to identify instances where we had incurred</b></p> <p>16 <b>costs or would incur costs to complete or to fix</b></p> <p>17 <b>corrective -- to complete work or to correct</b></p> <p>18 <b>defective work, which would be chargeable back to</b></p> <p>19 <b>the account of the involved subcontractor.</b></p> <p>20 Q. That's what he said?</p> <p>21 <b>A. In general terms, yes.</b></p> <p>22 Q. Do you recall when that conversation took</p> <p>23 place?</p> <p>24 <b>A. Again, it was after I had seen the email.</b></p>



43 (Pages 169 to 172)

Page 169	Page 171
<p>1 Q. Do you know if Lovett-Silverman had already 2 been added as a party to this case, when you had 3 that conversation with him? 4 <b>A. I don't recall the time sequence.</b> 5 Q. Other than this reference in this email, 6 had you seen that phrase before? 7 <b>A. I don't have a recollection of seeing it.</b> 8 <b>No.</b> 9 Q. Have you ever talked to anybody, other than 10 AJ Falango, about what "bang the subs" means in the 11 construction industry in Massachusetts? 12 <b>A. I have a general recollection of talking</b> 13 <b>with John Lovett and Tony Lardaro about it.</b> 14 Q. Why did you talk to them about it? 15 <b>A. I wanted to make sure that they were aware</b> 16 <b>of the existence of this email and the use of the</b> 17 <b>language.</b> 18 Q. Would use of that language trouble you? 19 <b>A. Yes.</b> 20 Q. Why? 21 <b>A. Because it was, I thought, inappropriate</b> 22 <b>language to be used in connection with our business</b> 23 <b>matters.</b> 24 Q. Is it policy of USF&amp;G to, quote, try to</p>	<p>1 <b>with Standen in Massachusetts -- in the Standen</b> 2 <b>case.</b> 3 Q. Other than the Standen ones, you're not 4 aware of any that they have commenced recently on 5 behalf of USF&amp;G? 6 <b>A. Not that I have personal knowledge of.</b> 7 Q. Looking at the beginning part of that 8 bottom paragraph, where it says, I don't think the 9 825K is enough for the contingency. 10 Do you know what that means? 11 <b>A. I can only respond to your question this</b> 12 <b>way: Lovett-Silverman was tasked with developing</b> 13 <b>some estimated costs to complete. And this was an</b> 14 <b>effort to try to estimate what those costs would be.</b> 15 Q. Was it your understanding of USF&amp;G or the 16 surety, when Lovett-Silverman started this job, that 17 Lovett-Silverman would bring this job in within the 18 original construction budget? 19 <b>A. Where are you --</b> 20 Q. In general, was it your expectation or the 21 expectation of the surety that Lovett-Silverman 22 would complete this job and bring it in within the 23 original construction budget? 24 <b>A. Lovett-Silverman wasn't tasked with the</b></p>
Page 170	Page 172
<p>1 bang subs? 2 <b>A. Whatever that means, it's not our policy.</b> 3 Q. Going to the second part where it talks 4 about, We can never recover from them what we are 5 spending, do you know what that means? 6 <b>A. I can't put myself in the mind of AJ</b> 7 <b>Falango. I can only tell you what inference I would</b> 8 <b>draw from it.</b> 9 Q. What inference would you draw from that? 10 <b>A. That the costs that were being incurred,</b> 11 <b>that would be subject to back charge, subcontractors</b> 12 <b>would not be able to be recovered out of the</b> 13 <b>remaining contract balances on those subcontracts.</b> 14 Q. What was John Lovett's reaction to your 15 communication with him about this language? 16 <b>A. My general understanding is that he shared</b> 17 <b>my concern.</b> 18 Q. Is USF&amp;G continuing to do business with 19 Lovett-Silverman in Massachusetts? 20 <b>A. Yes.</b> 21 Q. What's the most recent project they've 22 commenced for USF&amp;G or the surety in general? 23 <b>A. I don't have a recollection of any</b> 24 <b>projects, other than the ones where they're involved</b></p>	<p>1 <b>responsibility of completing the project, so they</b> 2 <b>couldn't have done something within a budget. It</b> 3 <b>wasn't their responsibility.</b> 4 Q. Any idea why there was concern then about 5 whether the 825K is enough? 6 <b>A. We had asked them to give us information</b> 7 <b>about the estimated cost to complete, in order to</b> 8 <b>establish our loss reserves for this particular</b> 9 <b>matter.</b> 10 Q. Is there a policy at the surety for 11 awarding this kind of outside consulting work to 12 construction consultants who bring in the best work 13 for the least money? 14 <b>A. No.</b> 15 Q. Was that kind of statement ever made to 16 Lovett-Silverman? 17 <b>A. Not that I'm aware of.</b> 18 Q. Can you tell me what you did in preparation 19 for this deposition today to be ready for this? 20 <b>MR. HIPPE: Objection on the basis</b> 21 <b>of attorney-client privilege.</b> 22 Q. (By Mr. Meltzer) Other than communicating 23 with your attorney? 24 <b>A. If I can respond --</b></p>



# EXHIBIT B

1 (Pages 1 to 4)

Page 1

Volume I  
Pages 1 - 138

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION  
C.A. No. 05-CV-40072 FDS

LANDWORKS CREATIONS, LLC.  
Plaintiff,  
vs.  
UNITED STATES FIDELITY  
AND GUARANTY COMPANY and  
LOVETT-SILVERMAN CONSTRUCTION  
CONSULTANTS, INC.,  
Defendants.

\*\*\*\*\*

DEPOSITION of KATHRYN CROCKETT, called as a  
witness by counsel for the Plaintiff, pursuant to  
the applicable provisions of the Federal Rules of  
Civil Procedure, before Norma Flynn Borelli, CSR No.  
102783, Registered Professional Reporter and Notary  
Public in and for the Commonwealth of Massachusetts,  
taken at the offices of THE MOUNTAIN STATES LAW  
GROUP, 180 Speen Street, Framingham, Massachusetts,  
on Wednesday, January 10, 2007, at 9:10 AM.

\*\*\*\*\*  
FLYNN REPORTING ASSOCIATES  
Professional Court Reporters  
One Exchange Place  
Worcester, Massachusetts 01608  
(508) 755-1303 \* (817) 535-2727  
TOLL FREE: (888) 244-8858  
FAX: (508) 752-4611  
\*\*\*\*\*

Page 2

2  
3  
4 THE MOUNTAIN STATES LAW GROUP  
Robert N. Meltzer, Esq.  
160 Speen Street, SU 307  
5 P.O. Box 1459  
Framingham, Massachusetts 01701  
6 for the Plaintiff.  
7  
8 HERMES, NETBURN, O'CONNOR & SPEARING  
BY: Eric C. Hipp, Esq.  
9 265 Franklin Street  
Boston, Massachusetts 02109  
10 for the Defendant/United States Fidelity  
and Guaranty Company.  
11  
12 DONOVAN & HATEM LLP  
BY: Julie A. Ciollo, Esq.  
13 Two Seaport Lane  
Boston, Massachusetts 02210  
14 for the Defendant/Lovett-Silverman  
Construction Consultants, Inc.  
15  
16  
17 POJANI, HURLEY, RITTER & SALVIDIO, LLP  
BY: William J. Ritter, Esq.  
18 446 Main Street, 21st Floor  
19 Worcester, Massachusetts 01608  
20 for the Deponent.

21 ALSO PRESENT:  
22 Neal Matthews  
23  
24

Page 3

1 INDEX  
2 Testimony of: Direct Cross Redirect Recross  
3 KATHRYN CROCKETT  
4 by Mr. Meltzer 5  
5

## EXHIBITS

Exhibit No.	Description	For I.D.
6		
7		
8	1 Under Drainage Document	39
9	2 Storm Drainage Document	41
10	3 Water Systems Document	41
11	4 Irrigation Document	43
12	5 Site Improvements Document	44
13	6 E-Mail dated 6/8/05	81
14	7 Memo dated 10/10/01	84
15	8 Letter dated 12/30/02	88
16	9 Letter dated 10/14/04	89
17	10 Letter dated 9/26/05	93
18	11 E-Mail dated 10/6/05	95
19	12 Letter dated 8/26/04	97
20	13 Letter dated 11/04/04	100
21	14 Letter dated 2/2/05	102
22	15 Alternate No. 5	103
23	16 E-Mail dated 11/5/04	109
24	17 Letter dated 10/4/04	110

Page 4

1 CONTINUED:  
2 18 Estimate 112  
3 19 Letter of Transmittal 112  
4 20 Letter of Transmittal 113  
5 21 Letter dated 10/24/05 114  
6 22 Letter dated 12/6/05 115  
7 23 Construction Meeting #107 119  
8 24 Construction Meeting #103 120  
9 25 Construction Meeting #98 124  
10 26 Oak Middle School Completion  
Game Plan 125  
11  
12 27 Status of Project 126  
13  
14 28 E-Mail dated 12/8/04 130  
15  
16 29 E-Mail dated 6/30/04 131  
17  
18 30 E-Mail dated 2/27/04 132  
19  
20

21 \*\* EXHIBITS RETAINED BY ATTORNEY MELTZER \*\*  
22  
23  
24

34 (Pages 133 to 136)

Page 133

1 Landworks bringing to their attention there was a  
 2 deficiency on the grades?  
 3 **A. I have not seen a letter to Landworks.**  
 4 **Q.** Do you know if Landworks was given an  
 5 opportunity to correct the grades that you just  
 6 referenced?  
 7 **A. I do not.**  
 8 **Q.** Other than grades, what other issues would  
 9 you put as deficiencies?  
 10 **A. I know Landworks was responsible for the**  
 11 **concrete at the accessible sidewalks that had to be**  
 12 **redone.**  
 13 **Q.** Do you know if they were given an  
 14 opportunity to do that work?  
 15 **A. I do not know.**  
 16 **Q.** Have you ever seen any correspondence to  
 17 Landworks directing them to complete that work, to  
 18 do that work?  
 19 **A. I haven't seen it.**  
 20 **Q.** Were you ever present at any conversations  
 21 where Landworks refused to do that work?  
 22 **A. There is that activity schedule where it**  
 23 **says the ramps were disputed by Landworks. And I do**  
 24 **recall that.**

Page 134

1 **Q.** Did they say they were refusing to do that  
 2 work, even though it was disputed?  
 3 **A. I don't recall.**  
 4 **Q.** Have you ever seen any correspondence to  
 5 Landworks stating if work was not done, their  
 6 contract would be terminated?  
 7 **A. I haven't.**  
 8 **Q.** Have you ever seen any kind of termination  
 9 letter to Landworks?  
 10 **A. No.**  
 11 **Q.** Were you ever asked by the surety to put  
 12 together a list of deficiencies as to work done by  
 13 Landworks?  
 14 **A. Not specifically to Landworks.**  
 15 **Q.** As to who?  
 16 **A. As to the project.**  
 17 **Q.** Did you put together that list of  
 18 deficiencies?  
 19 **A. I don't recall if it was specifically for**  
 20 **the bonding company, but we do that as a contractual**  
 21 **obligation.**  
 22 **Q.** In that particular document, did you  
 23 identify by subcontractor who those deficiencies  
 24 belonged to?

Page 135

1 **A. No.**  
 2 **MR. MELTZER:** Let's take a quick  
 3 five-minute break.  
 4 (Short recess taken.)  
 5 **MR. MELTZER:** That's all I have.  
 6 **MR. HIPPE:** No questions.  
 7 **MS. CIOLLO:** No questions.  
 8 (Adjourned at 12:30 PM.)  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

Page 136

1 I, KATHRYN CROCKETT, do hereby  
 2 certify that I have read the foregoing transcript of  
 3 my testimony, and further certify that said  
 4 transcript is a true and accurate record of said  
 5 testimony.  
 6 DATED AT \_\_\_\_\_  
 7 this \_\_\_\_ day of \_\_\_\_\_, 2007.  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17 SIGNED UNDER THE PAINS AND  
 18 PENALTIES OF PERJURY.  
 19  
 20  
 21  
 22  
 23  
 24

# EXHIBIT C



Page 1	Page 3																																	
<p>Volume I Pages 1 - 53</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS CENTRAL DIVISION C.A. No. 05-CV-40072 FDS</p> <p>LANDWORKS CREATIONS, LLC. Plaintiff, vs. UNITED STATES FIDELITY AND GUARANTY COMPANY and LOVETT-SILVERMAN CONSTRUCTION CONSULTANTS, INC., Defendants.</p> <p>*****</p> <p>DEPOSITION of WILLIAM A. MERITZ, called as a witness by counsel for the Plaintiff, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Norma Flynn Borelli, CSR No. 102793, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, taken at the offices of THE MOUNTAIN STATES LAW GROUP, 160 Speen Street, Framingham, Massachusetts, on Thursday, January 11, 2007, at 11:20 AM.</p> <p>*****</p> <p>FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 * (617) 536-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4611 *****</p>	<p>INDEX</p> <p>Testimony of: Direct Cross Redirect Recross WILLIAM A. MERITZ by Mr. Meltzer 4</p> <p>EXHIBITS</p> <table border="1"> <thead> <tr> <th>Exhibit No.</th> <th>Description</th> <th>For I.D.</th> </tr> </thead> <tbody> <tr> <td>44</td> <td>E-Mail dated 8/22/05</td> <td>20</td> </tr> <tr> <td>45</td> <td>E-Mail dated 9/08/05</td> <td>22</td> </tr> <tr> <td>46</td> <td>E-Mail dated 9/15/05</td> <td>26</td> </tr> <tr> <td>47</td> <td>E-Mail dated 9/15/05</td> <td>28</td> </tr> <tr> <td>48</td> <td>E-Mail dated 9/26/05</td> <td>33</td> </tr> <tr> <td>49</td> <td>E-Mail dated 10/5/05</td> <td>39</td> </tr> <tr> <td>50</td> <td>E-Mail dated 11/4/05</td> <td>41</td> </tr> <tr> <td>51</td> <td>E-Mail dated 1/16/06</td> <td>45</td> </tr> <tr> <td>52</td> <td>E-Mail dated 1/25/06</td> <td>46</td> </tr> <tr> <td>53</td> <td>E-Mail dated 2/1/06</td> <td>49</td> </tr> </tbody> </table> <p>** EXHIBITS RETAINED BY ATTORNEY MELTZER **</p>	Exhibit No.	Description	For I.D.	44	E-Mail dated 8/22/05	20	45	E-Mail dated 9/08/05	22	46	E-Mail dated 9/15/05	26	47	E-Mail dated 9/15/05	28	48	E-Mail dated 9/26/05	33	49	E-Mail dated 10/5/05	39	50	E-Mail dated 11/4/05	41	51	E-Mail dated 1/16/06	45	52	E-Mail dated 1/25/06	46	53	E-Mail dated 2/1/06	49
Exhibit No.	Description	For I.D.																																
44	E-Mail dated 8/22/05	20																																
45	E-Mail dated 9/08/05	22																																
46	E-Mail dated 9/15/05	26																																
47	E-Mail dated 9/15/05	28																																
48	E-Mail dated 9/26/05	33																																
49	E-Mail dated 10/5/05	39																																
50	E-Mail dated 11/4/05	41																																
51	E-Mail dated 1/16/06	45																																
52	E-Mail dated 1/25/06	46																																
53	E-Mail dated 2/1/06	49																																
<p>Page 2</p> <p>THE MOUNTAIN STATES LAW GROUP Robert N. Meltzer, Esq. 160 Speen Street, SU 307 P.O. Box 1459 Framingham, Massachusetts 01701 for the Plaintiff.</p> <p>HERMES, NETBURN, O'CONNOR &amp; SPEARING BY: Eric C. Hipp, Esq. 265 Franklin Street Boston, Massachusetts 02109 for the Defendant/United States Fidelity and Guaranty Company.</p> <p>DONOVAN &amp; HATEM LLP BY: Marianne E. Brown, Esq. Two Seaport Lane Boston, Massachusetts 02210 for the Defendant/Lovett-Silverman Construction Consultants, Inc.</p> <p>ALSO PRESENT: Neal Matthews</p>	<p>Page 4</p> <p>STIPULATIONS</p> <p>It is stipulated by and between counsel for the respective parties that the deposition transcript will be read and signed by the deponent within forty-five (45) days of receipt of transcript under the pains and penalties of perjury. The filing and the notarization are hereby waived.</p> <p>It is further agreed that all objections, except as to the form of the question, and motions to strike, are reserved until the time of trial.</p> <p>WILLIAM A. MERITZ, having been satisfactorily identified and duly sworn by the Notary Public, was examined and testified as follows:</p> <p>DIRECT EXAMINATION</p> <p>BY MR. MELTZER:</p> <p>Q. Would you state your name for the record?</p> <p>A. William A. Meritz.</p> <p>Q. Mr. Meritz, have you ever been deposed before?</p> <p>A. No.</p> <p>Q. Okay. My name is Rob Meltzer. I am an attorney for Landworks, a plaintiff in this case</p>																																	

Page 45	Page 47
<p>1 (Exhibit No. 51 marked for 2 Identification.) 3 Q. Have you ever seen this e-mail? 4 A. I see it now. 5 Q. Do you recall seeing it at the time? 6 A. I do not recall. 7 Q. Do you recall having any conversations with 8 anybody about this particular e-mail? 9 A. I do not remember. 10 Q. Were you at all involved in determining 11 back charges against Landworks? 12 A. Repeat the question. 13 Q. Were you involved in establishing the back 14 charges against Landworks? 15 A. I don't recall. 16 Q. Do you recall being involved in any 17 meetings where back charges against Landworks were 18 discussed? 19 A. No. 20 Q. In January of 2006, did you make any effort 21 to determine the scope of Landworks' contract? 22 A. I don't recall. 23 Q. Do you recall if you made any effort to 24 determine if, in fact, there was a prior landscaper</p>	<p>1 have any correspondence in your files pertaining to 2 deficient work performed by Landworks?" 3 Do you see that paragraph? 4 A. Yes, I do. 5 Q. Prior to February 1st, 2006, were you 6 instructed to begin preparing a report to the 7 surety? 8 A. I do not recall. 9 Q. It says, "We are preparing a report." Who 10 does that "we" refer to? 11 A. I don't recall. 12 Q. Do you recall sending this request for 13 information to Katie Crockett? 14 A. I do not. 15 Q. Do you recall getting a response from her? 16 A. I do not recall. 17 Q. Were you involved in preparing a report to 18 the surety regarding Landworks? 19 A. Repeat that question. 20 (Pending question read back.) 21 A. I don't remember. 22 Q. When it says "we are preparing a record," 23 do you know if that report was finalized? 24 A. I do not remember.</p>
Page 46	Page 48
<p>1 when Jackson was on the project? 2 A. Repeat that question. 3 Q. In January of 2006, did you make any effort 4 to determine if there had been a landscaper working 5 on this project when Jackson was on the project? 6 A. I don't recall. 7 Q. In January of 2006, did you make any 8 inquiry into who was responsible for providing 9 material for site work on the project? 10 A. I don't recall. 11 Q. In January of 2006, did you make any 12 inquiry as to who was responsible for doing exterior 13 electric work at the project? 14 A. Repeat that question. 15 (Pending question read back.) 16 A. I do not recall. 17 MR. MELTZER: Let's mark this as 18 Exhibit 52. 19 (Exhibit No. 52 marked for 20 Identification.) 21 Q. Have you seen this e-mail before? 22 A. I see it now. 23 Q. Do you see it says, "We are preparing a 24 report to the surety regarding Landworks. Do you</p>	<p>1 Q. Do you recall seeing a draft version? 2 A. I do not remember. 3 Q. Would it be typical on a project of this 4 kind to prepare a written report to the surety 5 regarding a subcontractor? 6 A. Repeat that question. 7 (Pending question read back.) 8 A. Perhaps. 9 Q. Okay. Did you do that for other 10 subcontractors on this project? 11 A. I don't remember. 12 Q. Do you know why this was being done 13 particularly in February of 2006? 14 A. No. 15 Q. After February 1st, 2006, have you ever 16 seen any documentation which identifies specifically 17 deficiencies in Landworks' work? 18 A. I don't remember. 19 Q. As I sit here today, can you tell me one 20 item, even one item, that Landworks had done that 21 was deficient? 22 A. I don't remember. 23 MR. MELTZER: Let's mark this as 24 Exhibit 53.</p>

# EXHIBIT D





24 (Pages 93 to 96)

Page 93	Page 95
<p>1 Concrete?</p> <p>2 A. In this e-mail?</p> <p>3 Q. How about other than this e-mail?</p> <p>4 A. No.</p> <p>5 Q. Ever see any references to them in any</p> <p>6 documents prepared by Jackson?</p> <p>7 A. No.</p> <p>8 Q. Do you see where it says, "They were</p> <p>9 probably a sub to Landworks"?</p> <p>10 A. Yes.</p> <p>11 Q. Were you ever able to establish if Frias</p> <p>12 Concrete was a sub to Landworks?</p> <p>13 A. It wasn't. I wasn't asked to establish</p> <p>14 that.</p> <p>15 Q. Have you ever seen any documents suggesting</p> <p>16 they were a sub to Landworks?</p> <p>17 A. No.</p> <p>18 Q. Do you know if by Monday, January 16th,</p> <p>19 2006, it had been positively ascertained what</p> <p>20 exactly Landworks' scope of work had been?</p> <p>21 A. We had the scope of work that we received,</p> <p>22 the exhibit that's in the subcontract. That's their</p> <p>23 scope of work.</p> <p>24 Q. As of this January 16th, e-mail, No. 51</p>	<p>1 and Jason to "please include any photos and</p> <p>2 videotape of these specific items before and after."</p> <p>3 Do you see the reference?</p> <p>4 A. Yes.</p> <p>5 Q. Did you receive any photos and videos in</p> <p>6 response to this e-mail?</p> <p>7 A. I don't know.</p> <p>8 Q. You state further down, "Also I am sending</p> <p>9 my current list of the site work scope." Do you see</p> <p>10 that reference?</p> <p>11 A. Yes.</p> <p>12 Q. Underneath, you have got this whole section</p> <p>13 in all caps, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Where did you get that material that's</p> <p>16 attached there?</p> <p>17 A. From the scope of work.</p> <p>18 Q. This is the exhibit to the Jackson</p> <p>19 contract?</p> <p>20 A. Yes.</p> <p>21 Q. Is there more to that exhibit than this?</p> <p>22 A. I don't know.</p> <p>23 Q. As of December 21, 2005, did you have any</p> <p>24 conversation with Landworks since the August 2005</p>
Page 94	Page 96
<p>1 we've marked, it's not known if Frias was a sub to</p> <p>2 Landworks, is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. There are still doubts as to who was</p> <p>5 working for Landworks?</p> <p>6 A. With regard to subs to Landworks, yes.</p> <p>7 Q. You don't know if Frias was to Jackson as</p> <p>8 opposed to being to Landworks?</p> <p>9 A. I don't know.</p> <p>10 Q. Were you ever asked to investigate that</p> <p>11 matter by anyone?</p> <p>12 A. I was not.</p> <p>13 Q. Take a look at No. 52.</p> <p>14 A. Okay.</p> <p>15 Q. I want to start --</p> <p>16 MS. BROWN: I'm not done reading</p> <p>17 it yet.</p> <p>18 MR. MELTZER: Take your time.</p> <p>19 Q. I want to start on Page 5 of 6, the e-mail</p> <p>20 that is addressed to Bob and Jason. Could you tell</p> <p>21 me what instigated the creation of this e-mail on</p> <p>22 December 21st, 2005, at 2:14 PM?</p> <p>23 A. I don't recall what instigated it.</p> <p>24 Q. There is a reference here, you asked Bob</p>	<p>1 conversation discussing their scope?</p> <p>2 A. No.</p> <p>3 Q. By December 21, 2005, had you had any</p> <p>4 conversation with anybody from Jackson Construction</p> <p>5 confirming the scope of Landworks' work on this</p> <p>6 project?</p> <p>7 A. No.</p> <p>8 Q. As of December 21, 2005, had you spoken to</p> <p>9 anybody at CTM about Landworks' scope on this</p> <p>10 project?</p> <p>11 A. No.</p> <p>12 Q. As of December 21, 2005, had you spoken to</p> <p>13 anybody at Waterman about the scope?</p> <p>14 A. Landworks' scope?</p> <p>15 Q. Yes.</p> <p>16 A. No.</p> <p>17 Q. This December 21, 2005, 2:45 e-mail, is</p> <p>18 based entirely on an understanding of scope drawn</p> <p>19 from the exhibit to the Jackson contract?</p> <p>20 A. Yes.</p> <p>21 Q. Had you looked at any other documents to</p> <p>22 ascertain scope by December 21, 2005?</p> <p>23 A. Just the subcontract with Jackson.</p> <p>24 Q. By December 21, 2005, had you reviewed any</p>

25 (Pages 97 to 100)

Page 97	Page 99
<p>1 schedules of values?</p> <p>2 <b>A. No.</b></p> <p>3 Q. This all-capped section you have here, is</p> <p>4 that cut and pasted from something?</p> <p>5 <b>A. I don't recall.</b></p> <p>6 Q. Directing your attention on Page 4 of 6,</p> <p>7 there is another e-mail, same people. There is a</p> <p>8 reference there to Bob and Jason included in the</p> <p>9 December 21st e-mail. Do you see that reference?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Had you not received the information by</p> <p>12 January 9, 2006?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Had you been getting pressure to provide</p> <p>15 this information?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Why did you send this e-mail on January 9,</p> <p>18 2006?</p> <p>19 <b>A. There was a due date.</b></p> <p>20 Q. What was the due date?</p> <p>21 <b>A. I don't recall.</b></p> <p>22 Q. Due date for what?</p> <p>23 <b>A. The information.</b></p> <p>24 Q. What was going to happen when this due date</p>	<p>1 Q. What was the basis for your understanding</p> <p>2 of this 33,474 was within Landworks' scope?</p> <p>3 <b>A. They were responsible for lawns and</b></p> <p>4 <b>grasses.</b></p> <p>5 Q. So this comes from --</p> <p>6 <b>A. They were responsible for this work in the</b></p> <p>7 <b>subcontract.</b></p> <p>8 Q. This is from the exhibit from the Jackson</p> <p>9 contract?</p> <p>10 <b>A. The subcontract, yes.</b></p> <p>11 Q. Next section, "landscaper, labor,</p> <p>12 equipment, perimeter building, lawns, things of that</p> <p>13 nature"?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. What is your basis for asserting these are</p> <p>16 the responsibility of Landworks?</p> <p>17 <b>A. The subcontract between Jackson and</b></p> <p>18 <b>Landworks.</b></p> <p>19 Q. Relying entirely on the exhibit to the</p> <p>20 Jackson contract?</p> <p>21 <b>A. Relying on the subcontract.</b></p> <p>22 Q. The document exhibit you refer to in your</p> <p>23 December 21, 2005 e-mail?</p> <p>24 <b>A. Referring to their scope of work.</b></p>
Page 98	Page 100
<p>1 arrived?</p> <p>2 <b>A. I was getting my job done.</b></p> <p>3 Q. Was somebody pressuring you to get this</p> <p>4 information?</p> <p>5 <b>A. I don't recall pressure.</b></p> <p>6 Q. Take a look on Page 3 of 6, an e-mail dated</p> <p>7 Tuesday, January 10, 2006 at 3:20 PM from Jason</p> <p>8 Goodwin to you.</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Going down this category, it provided a</p> <p>11 list of material where it says "loam, fill and</p> <p>12 sand"?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Do you know what that reference to</p> <p>15 "material," what that refers to?</p> <p>16 <b>A. That refers to actual cost for loam, fill,</b></p> <p>17 <b>and sand.</b></p> <p>18 Q. That includes the lawns around the building</p> <p>19 and so forth?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Was it your understanding as of January 10,</p> <p>22 2006, that this entire category coming out to 33,474</p> <p>23 was within Landworks' scope?</p> <p>24 <b>A. That was my understanding.</b></p>	<p>1 Q. Which is shown on Page 5 of 6?</p> <p>2 <b>A. Not just that.</b></p> <p>3 Q. What else?</p> <p>4 <b>A. The subcontract. The entire contract.</b></p> <p>5 Q. Based upon the Jackson subcontract?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. When it goes down and says, "Turf Links,</p> <p>8 53,094 total to date"?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. What is that for?</p> <p>11 <b>A. Seeding and fertilizer.</b></p> <p>12 Q. Of what?</p> <p>13 <b>A. The lawn areas.</b></p> <p>14 Q. That's not the athletic fields, you said,</p> <p>15 right?</p> <p>16 <b>A. I don't recall. It may be athletic fields,</b></p> <p>17 <b>too. I don't recall.</b></p> <p>18 Q. We have the next one "Cape and Island, 185</p> <p>19 for a purchase order."</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. What is that for?</p> <p>22 <b>A. That is for the track. I believe it is the</b></p> <p>23 <b>whole track.</b></p> <p>24 Q. Is it your testimony that "185" is scope</p>

26 (Pages 101 to 104)

Page 101	Page 103
<p>1 within Landworks' subcontract with Jackson?</p> <p>2 A. If this includes the rubber track, the</p> <p>3 rubber track is not part of Landworks' contract.</p> <p>4 Q. Do you know how much of that 185?</p> <p>5 A. I don't know.</p> <p>6 Q. There is a section for G&amp;R. Comes out to</p> <p>7 only about 1,300, but concrete form for head walls?</p> <p>8 A. Yes.</p> <p>9 Q. Would you state that is Landworks' scope of</p> <p>10 work?</p> <p>11 A. Yes.</p> <p>12 Q. Based upon what?</p> <p>13 A. I don't recall.</p> <p>14 Q. Then we have electrical work at the</p> <p>15 football field, 12,450. Would you tell me why that</p> <p>16 would be within Landworks' scope?</p> <p>17 A. It was removed under site demolition.</p> <p>18 Q. Under site demolition, that belonged to</p> <p>19 Landworks?</p> <p>20 A. If it was damaged by them.</p> <p>21 Q. Was it damaged by them?</p> <p>22 A. During this site demolition. My</p> <p>23 investigation showed it was.</p> <p>24 Q. What investigation was that?</p>	<p>1 Q. Who did the site demolition there?</p> <p>2 A. Site demolition is part of Landworks'</p> <p>3 contract.</p> <p>4 Q. Do you know for a fact that Landworks did</p> <p>5 site demolition?</p> <p>6 A. I know it's part of their contract,</p> <p>7 subcontract.</p> <p>8 Q. When does site demolition usually occur on</p> <p>9 a construction project like this?</p> <p>10 A. It can occur any time. This is not</p> <p>11 building a new building. This is a remote area of</p> <p>12 the job. It could occur any time.</p> <p>13 Q. It could have occurred at the beginning of</p> <p>14 the job?</p> <p>15 A. It could have.</p> <p>16 Q. Site contractor in the beginning of this</p> <p>17 could have done that damage?</p> <p>18 A. Could have.</p> <p>19 Q. Do you know if Landworks was the site</p> <p>20 contractor at the beginning of the job?</p> <p>21 A. I don't know.</p> <p>22 Q. Bottom of Page 2 of 6. There is an e-mail</p> <p>23 from you addressed to the esteemed attorney Eric C.</p> <p>24 Hipp, sitting to my right, saying, "Here is the</p>
Page 102	Page 104
<p>1 A. Discussions.</p> <p>2 Q. With whom?</p> <p>3 A. Bob Cox when I walked around with him in</p> <p>4 July.</p> <p>5 Q. What did he tell you?</p> <p>6 A. I don't recall exactly, but that's why I</p> <p>7 listed it as Landworks.</p> <p>8 Q. You don't recall exactly what he told you?</p> <p>9 A. No.</p> <p>10 Q. Your understanding was based upon some July</p> <p>11 conversation with Bob Cox, Landworks damaged</p> <p>12 electrical?</p> <p>13 A. Yes.</p> <p>14 Q. Did Bob Cox point out something and say,</p> <p>15 Landworks damaged this?</p> <p>16 A. Yes.</p> <p>17 Q. Specifically he mentioned Landworks?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did he say site guy or Landworks?</p> <p>20 A. I don't recall.</p> <p>21 Q. What exactly were you looking at that he</p> <p>22 claimed was broken?</p> <p>23 A. At that point we were looking around the</p> <p>24 track area where the site demolition took place.</p>	<p>1 input from G&amp;R regarding the site work scope." Do</p> <p>2 you see this?</p> <p>3 A. Yes.</p> <p>4 Q. Did you have any conversations with</p> <p>5 Attorney Hipp about this January 10th, 2006 e-mail?</p> <p>6 MR. HIPPI: Objection.</p> <p>7 A. Oral.</p> <p>8 Q. Do you recall at any time having any</p> <p>9 conversation with Attorney Hipp in which you explain</p> <p>10 that you are basing your understanding of the scope</p> <p>11 on Jackson's subcontract with Landworks?</p> <p>12 MR. HIPPI: Objection.</p> <p>13 A. I don't recall.</p> <p>14 Q. You don't recall writing any e-mails that</p> <p>15 stated that?</p> <p>16 A. I don't recall.</p> <p>17 Q. Turn to the top of Page 2 of 6. Do you see</p> <p>18 where it requests documentary support for these</p> <p>19 charges? "Thank you for the e-mail regarding the</p> <p>20 back charges." Do you see where it says, "Where is</p> <p>21 the documentary support for these charges?"</p> <p>22 A. Yes.</p> <p>23 Q. Did you provide that documentary support?</p> <p>24 A. Yes.</p>



27 (Pages 105 to 108)

Page 105	Page 107
<p>1 Q. What did that consist of?</p> <p>2 A. It consisted of tickets for material and</p> <p>3 G&amp;R Invoices and their subcontractor invoices.</p> <p>4 Q. Did you provide any documents to Attorney</p> <p>5 Hipp that referenced the scope of Landworks?</p> <p>6 MR. HIPPI: Objection.</p> <p>7 A. No.</p> <p>8 Q. I am going to direct your attention then to</p> <p>9 Page 1, an e-mail from you to Bob Morel and Jason</p> <p>10 Goodwin, asking that certain information be provided</p> <p>11 no later than Monday, June 30, 2006. Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. There is an e-mail above that from Jason</p> <p>15 Goodwin to you. Do you see that reference?</p> <p>16 A. Yes.</p> <p>17 Q. Was documentation provided that supported</p> <p>18 the paragraph at the top of that e-mail?</p> <p>19 A. Pardon me?</p> <p>20 Q. Was the documentation that was provided,</p> <p>21 did it reference the top of that? "All the</p> <p>22 documentation is represented by the invoices I have</p> <p>23 supplied." Do you see that reference?</p> <p>24 A. Yes.</p>	<p>1 A. Yes.</p> <p>2 Q. Why was this e-mail generated, do you know?</p> <p>3 MR. HIPPI: Objection. Which</p> <p>4 e-mail are you referring to?</p> <p>5 MR. MELTZER: Look at the string.</p> <p>6 The reason I put that in is I want to get the string</p> <p>7 of the whole exhibit.</p> <p>8 MS. BROWN: We've looked at this</p> <p>9 before.</p> <p>10 Q. I am looking at the first e-mail.</p> <p>11 A. Okay. The e-mail from Jason to me.</p> <p>12 Q. Do you know why it was generated?</p> <p>13 A. No.</p> <p>14 Q. Directing your attention to these costs to</p> <p>15 complete.</p> <p>16 A. Yes.</p> <p>17 Q. The reference "six plus concrete ramps, not</p> <p>18 ADA," do you know what that means?</p> <p>19 A. Yes.</p> <p>20 Q. What does that mean?</p> <p>21 A. The ramps were not placed per ADA</p> <p>22 requirements.</p> <p>23 Q. Do you know who poured those ramps?</p> <p>24 A. No.</p>
Page 106	Page 108
<p>1 Q. It says here they supplied documents each</p> <p>2 month to LSCC.</p> <p>3 A. Yes.</p> <p>4 Q. In addition to that, did G&amp;R Construction</p> <p>5 actually go themselves and pull together a new batch</p> <p>6 of documents for submission?</p> <p>7 A. I don't recall.</p> <p>8 Q. You don't recall if they asked LSCC to</p> <p>9 gather that information together?</p> <p>10 A. I don't recall that. I don't remember.</p> <p>11 Q. Do you recall seeing the Griffin Electric</p> <p>12 Invoice?</p> <p>13 A. No, I don't.</p> <p>14 Q. Have you ever seen a Griffin Electric</p> <p>15 invoice that indicates they are fixing things broken</p> <p>16 by Landworks?</p> <p>17 A. I don't remember.</p> <p>18 Q. As you sit here today, you are not sure</p> <p>19 what the Griffin invoice showed?</p> <p>20 A. No. I just don't remember the Griffin</p> <p>21 Invoice that I am referring to here, or he is</p> <p>22 referring to here.</p> <p>23 (Short recess taken.)</p> <p>24 Q. Do you recall seeing this e-mail?</p>	<p>1 Q. We had a reference at some point to a</p> <p>2 company called Frias who was involved in this</p> <p>3 project. Do you remember we were discussing that a</p> <p>4 few moments ago?</p> <p>5 A. I remember.</p> <p>6 Q. Do you know if they poured those ramps?</p> <p>7 A. I don't know.</p> <p>8 Q. Same thing for the concrete stoop. Do you</p> <p>9 know who poured it?</p> <p>10 A. No.</p> <p>11 Q. "Touch up seeding fertilizing," do you know</p> <p>12 where that is located?</p> <p>13 A. I don't recall.</p> <p>14 Q. You get to "the installation of athletic</p> <p>15 equipment," do you know what athletic equipment is</p> <p>16 involved there?</p> <p>17 A. I don't know the specific pieces, no.</p> <p>18 Q. Why is that being attributed to Landworks</p> <p>19 in this e-mail, do you know?</p> <p>20 MR. HIPPI: Objection.</p> <p>21 Q. If you know.</p> <p>22 A. I don't know.</p> <p>23 Q. A reference to "asphalt at flagpoles," do</p> <p>24 you know what that means?</p>



28 (Pages 109 to 112)

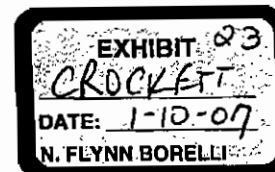
Page 109	Page 111
<p>1 <b>A. Yes.</b></p> <p>2 Q. What is that?</p> <p>3 <b>A. There was asphalt missing around the</b></p> <p>4 <b>flagpole.</b></p> <p>5 Q. What kind of asphalt was it, do you know?</p> <p>6 <b>A. Wearing.</b></p> <p>7 Q. Are we talking bituminous or concrete?</p> <p>8 <b>A. Bituminous.</b></p> <p>9 Q. Do you know whose scope of work that was?</p> <p>10 <b>A. Subcontract for Landworks.</b></p> <p>11 Q. You are referring back to the exhibit of</p> <p>12 the Jackson and Landworks' subcontract?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Does this specify asphalt flagpole in that</p> <p>15 subcontract? Did it stay as part of the scope?</p> <p>16 <b>A. It shows it on the drawings, yes.</b></p> <p>17 Q. When you say "it's close to 10,000," was</p> <p>18 that work previously done?</p> <p>19 <b>A. I don't see this.</b></p> <p>20 Q. Was the asphalt missing or defective?</p> <p>21 <b>A. Missing.</b></p> <p>22 Q. It hadn't been done?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. How about the sidewalk next to Sherwood</p>	<p>1 what does that refer to?</p> <p>2 <b>A. That's the fence.</b></p> <p>3 Q. Steelco's company?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. That's not Landworks?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. "Grading and drainage at paved area</p> <p>8 adjacent to track." What paved area is that?</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. See where the parentheses says, "Unforeseen</p> <p>11 conditions. Leave if unclear"?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Any idea what it means?</p> <p>14 <b>A. No.</b></p> <p>15 Q. Do you have any reason to believe that</p> <p>16 \$75,000 is attributable to Landworks?</p> <p>17 <b>A. I just don't recall that issue.</b></p> <p>18 Q. On this final as-built, 15,000, do you know</p> <p>19 what that is?</p> <p>20 <b>A. There is a requirement to do an as-built</b></p> <p>21 <b>survey.</b></p> <p>22 Q. Of what?</p> <p>23 <b>A. The grading.</b></p> <p>24 Q. As we've already discussed, you don't know</p>
Page 110	Page 112
<p>1 School, what's the issue with that?</p> <p>2 <b>A. Missing.</b></p> <p>3 Q. Not done at all?</p> <p>4 <b>A. Not done at all.</b></p> <p>5 Q. Not talking defective --</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. "Concrete pad at oil tongue, 10,000." Do</p> <p>8 you know what that refers to?</p> <p>9 <b>A. That refers to cracks in the concrete pads</b></p> <p>10 <b>over the oil tank.</b></p> <p>11 Q. Do you know who poured that concrete?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Do you have any reason to believe it was</p> <p>14 Landworks?</p> <p>15 <b>A. No.</b></p> <p>16 Q. What does "loam repair after track and</p> <p>17 paving installed," what does that mean?</p> <p>18 <b>A. After the track will be installed, the</b></p> <p>19 <b>equipment putting the track down will inevitably</b></p> <p>20 <b>damage those areas.</b></p> <p>21 Q. This was for repair of areas damaged during</p> <p>22 the track installation?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. "Fence around track and at school, 50,000,"</p>	<p>1 if it had been done prior to February of 2006?</p> <p>2 <b>A. As I stated before, I had no survey in our</b></p> <p>3 <b>possession.</b></p> <p>4 Q. And you hadn't asked Landworks for one in</p> <p>5 your prior conversation?</p> <p>6 <b>A. Correct.</b></p> <p>7 <b>MR. MELTZER: Let's mark this as</b></p> <p>8 <b>Exhibit 63.</b></p> <p>9 <b>(Exhibit No. 63 marked for</b></p> <p>10 <b>identification.)</b></p> <p>11 Q. I am going to ask you to look at No. 53.</p> <p>12 Do you recall seeing that document?</p> <p>13 <b>A. Yes. I'd like to read it.</b></p> <p>14 Q. By all means.</p> <p>15 <b>A. Okay.</b></p> <p>16 Q. Do you see there is a reference in the</p> <p>17 e-mail that, "Bill sent to Katie Crockett, the</p> <p>18 architect, requesting correspondence in your files</p> <p>19 pertaining to deficient work performed by</p> <p>20 Landworks," do you see that reference?</p> <p>21 <b>A. Where is it?</b></p> <p>22 Q. It says, Thank you for --</p> <p>23 <b>A. I know it's in here.</b></p> <p>24 Q. Here.</p>

29 (Pages 113 to 116)

Page 113	Page 115
<p>1 A. Okay.</p> <p>2 Q. Do you recall seeing this e-mail in</p> <p>3 February of 2006?</p> <p>4 A. I remember the e-mail.</p> <p>5 Q. Do you recall, after this e-mail was sent,</p> <p>6 the architect, Katie Crockett, provided to</p> <p>7 Lovett-Silverman a list of deficient work performed</p> <p>8 by Landworks?</p> <p>9 A. I don't recall that. I don't recall.</p> <p>10 Q. Do you recall receiving any list from CTM</p> <p>11 identifying deficient work performed by Landworks?</p> <p>12 A. I don't recall.</p> <p>13 Q. Do you recall seeing any kind of</p> <p>14 documentation from Waterman identifying deficient</p> <p>15 work performed by Landworks?</p> <p>16 A. I don't recall.</p> <p>17 Q. With the exception of the comment made by</p> <p>18 Cox, which we talked about, in July, had anybody</p> <p>19 ever said to you from July 2005 and today, that</p> <p>20 Landworks performed deficiently on this project?</p> <p>21 A. I don't recall.</p> <p>22 Q. Have you ever seen any correspondence from</p> <p>23 anybody identifying work that was not performed</p> <p>24 correctly by Landworks specifically?</p>	<p>1 Q. Ever ask anybody in the industry?</p> <p>2 A. I did not.</p> <p>3 Q. As you sit here today, do you have any idea</p> <p>4 what the bulk of their work is?</p> <p>5 A. No.</p> <p>6 Q. Where they work?</p> <p>7 A. No.</p> <p>8 Q. Who they work for?</p> <p>9 A. No.</p> <p>10 Q. What their usual scope of business is?</p> <p>11 A. No.</p> <p>12 Q. Their reputation in the community?</p> <p>13 A. No.</p> <p>14 Q. In your various travels in the construction</p> <p>15 business, has anybody ever mentioned Landworks to</p> <p>16 you?</p> <p>17 A. No.</p> <p>18 Q. Has anybody, outside of this project in</p> <p>19 your travels in the construction industry, ever made</p> <p>20 derogatory comments to you about Landworks?</p> <p>21 A. I don't recall any.</p> <p>22 Q. In your travels in the industry since 2005,</p> <p>23 have you ever mentioned Landworks to anybody on any</p> <p>24 other project in any context?</p>
Page 114	Page 116
<p>1 A. I don't recall that list.</p> <p>2 Q. In that same e-mail that Bill Meritz sent</p> <p>3 to Katie Crockett, they wrote, "We are preparing a</p> <p>4 report to the surety regarding Landworks." Have you</p> <p>5 ever seen a report to the surety regarding Landworks</p> <p>6 after February 1st, 2006?</p> <p>7 A. No.</p> <p>8 Q. As you sit here today in January of 2007,</p> <p>9 can you identify any work done by Landworks itself</p> <p>10 that was deficient on this project as opposed to</p> <p>11 perhaps not performed?</p> <p>12 A. I don't recall.</p> <p>13 Q. Prior to this project, had you ever heard</p> <p>14 of Landworks?</p> <p>15 A. No.</p> <p>16 Q. When you were talking to Neal Matthews in</p> <p>17 August of 2005, the conversation we talked about,</p> <p>18 did you ever discuss with him what Landworks does?</p> <p>19 A. I did not.</p> <p>20 Q. Did you ever investigate what they do?</p> <p>21 A. No, I didn't.</p> <p>22 Q. Did you ever search the web trying to find</p> <p>23 information on them?</p> <p>24 A. No.</p>	<p>1 A. I don't recall.</p> <p>2 Q. I'm going to ask you about an older e-mail.</p> <p>3 We have an e-mail here from Bill Meritz to you. I'm</p> <p>4 not sure exactly what was attached, but there is a</p> <p>5 message from you to Bill Meritz, 1:05 PM, August 5.</p> <p>6 It says, "Now we know who had the contract for</p> <p>7 asphalt and lawns." On August 5th, 2005, who had</p> <p>8 the contract for asphalt and who had the contract</p> <p>9 for lawns?</p> <p>10 A. Landworks.</p> <p>11 Q. That's based upon Exhibit A?</p> <p>12 A. Based upon their subcontract.</p> <p>13 MR. MELTZER: Let's mark that as</p> <p>14 Exhibit 64.</p> <p>15 (Exhibit No. 64 marked for</p> <p>16 identification.)</p> <p>17 Q. Seeing that reference to Frias Concrete</p> <p>18 that we've talked about, does that change, in your</p> <p>19 mind, who had the concrete work on this job?</p> <p>20 A. I don't think it changes in my mind, no.</p> <p>21 It doesn't change that in my mind.</p> <p>22 Q. If we found out who Frias was and they did</p> <p>23 the concrete work on this project, you would still</p> <p>24 take the position it was Landworks' scope?</p>

# EXHIBIT E

Shrewsbury Middle School – West  
Shrewsbury, Massachusetts



## CONSTRUCTION MEETING #107

23 December 2004

ATTENDANCE: Dan Morgado, Town Manager  
Ron Alarie, Building Inspector  
Gerry LaFlamme, Fire Chief  
Bob Cox, Superintendent of Public Buildings  
Patrick Collins, School Dept. Business Manager  
Frank Leonardo, Jackson Construction Co.  
Jack Ferguson, CTM  
Duffy Lanciani, Clerk of the Works  
Michael Pagano, Lamoureux Pagano Associates  
Katie Crockett, Lamoureux Pagano Associates

ITEM: DISCUSSION: RESPONSIBILITY:

- 6.4.2 Project Schedule – see previous minutes for more info.  
Balance of lockers to be delivered on Saturday, September 18. (885 on site currently). JCC to install balance of lockers (10/7). 83 additional lockers delivered (not yet installed). Balance due 11/12 (11/11). More (undefined quantity) delivered 11/18 (11/18).  
JCC reported that if the requisition payments continue at the current pace, construction will last another 11 months (11/18).  
JCC reported that their goal is to have C&D ready (except locker rooms, public buildings department area) for occupancy Jan. 3, 2005. The sequence of events required for that process was reviewed including: testing of life safety systems, isolation of contractor work (after hours only) from student occupancy, safe egress routes, below ceiling punch list, etc.(12/16)  
*JCC distributed an Activity Schedule for some items remaining to complete the project (attached)(12/23).*  
*The School Department would like to occupy the Gym and 1 Bldg. C classroom on Jan. 3 and the balance of C&D on Jan. 12. The town's Builders' Risk insurance renewal is due mid- Jan. with notification by Jan. 5. All efforts should be made to have C&D substantially complete by Jan. 5. Emergency systems to be tested Monday, Dec. 27 @ 8:00am. JCC to confirm that all systems are prepared by Sunday morning, Dec. 26. (12/23).*

CTM/JCC

- 8.26.1 Partial Occupancy Schedule: A&B (See previous minutes for more info.)
- Some fire doors are not closing properly (i.e. gaps between pairs of doors, etc.) Some fire doors in A & B were cut to close properly. JCC must replace (11/4). *JCC intends to certify relabeled doors. The Owner will not accept relabeling in lieu of replacement (12/23).*
  - Installation of metal doors and hardware unacceptable in many cases – i.e. spliced rods, doors that are larger than openings – must be replaced (9/30).
  - 3 fire extinguishers must be installed (11/4). Duffy to confirm locations (11/18).
  - All exterior emergency lighting must be operational (11/4). JCC to confirm schedule (11/18).



Shrewsbury Middle School – West  
Shrewsbury, Massachusetts

CONSTRUCTION MEETING #107

23 December 2004

9.9.1 Other A & B Issues

JCC

- Security testing scheduled for 11/7 (10/14). 95% complete (11/18).
- Building electric ground has not yet been installed (10/14). Ongoing (11/4).
- MEP above ceiling punch list has not yet been completed. MEP below ceiling punch list to be conducted this week (11/18).
- Cable in tunnel must be properly supported. Ongoing (11/18).
- Preparation for appliances (electrical and cutouts) incomplete in Room 141 (10/7). School Dept. to forward cut sheets to JCC for coordination. 220 required for dryer and oven (10/21).
- Door 253 required (reverse swing) for separation between SPED classroom and Library Media (10/21).
- Video distribution has not been installed (10/21). Or ordered (12/2).
- Balancing ongoing. Room 159 problematic (11/18).
- Incomplete window installation (plywood openings, broken hardware, etc.) continue to create heating issues (12/9).
- *JCC to confirm status of balancing report. JCC reports that all areas have air supply; controls to be confirmed (12/23)*
- *LPA below ceiling punch list to begin 12/27(12/23).*

9.9.2 Fire Damage Area

JCC

- Roof edge and associated roof work (11/4). 2 millwork cabinets remain to be installed, sink installation underway (11/18).
- *Metal panel installation/caulking unacceptable at courtyard area: excessive joint size and spliced materials (12/23).*

9.9.3 C & D Buildings

JCC

- (Note 9/16): Lift schedule to be verified by JCC. Due 10/25 (10/21). Mason required for installation. JCC negotiating mason's return (11/18). *Existing steel beam problematic for installation. JCC awaiting structural direction (12/16).*
- Some panels remain to be installed, horizontal batten strip remains to be installed on all elevations (10/14). Back on site; 1 week to complete. Currently 80% caulked (11/18). JCC to confirm that vertical batten strips can drain any condensation build up due to lack of horizontal batten strips (12/9).
- (Note 11/4): Corian edges at counters in gym lobby must be eased.
- (Note 11/11): Stage floor refinishing schedule undefined.
- (Note 11/18): Gym speakers schedule to remain are not on site and require replacement.
- (Note 12/9): Fire alarm installed except three devices, to be programmed Saturday, Dec. 11. *Retesting scheduled for 12/27 (12/23).*
- (Note 12/9): Lack of glazing at gym vestibule doors is problematic for school programming. JCC reports glazing due early next week.
- (Note 12/9): 3 hollow metal frames not installed.

9.2.1 Site Issues (see previous minutes for more info.)

JCC

- MAG Irrigation to install rain sensor, prepare as-builts, train the owner,

Shrewsbury Middle School – West  
Shrewsbury, Massachusetts

CONSTRUCTION MEETING #107

23 December 2004

(10/21). Owner to accept credit for winterization of irrigation system (12/9).

- 9.9.7 Roof (See previous minutes for more info.) JCC  
(Note 12/2): JCC claims that some roof edge damage (at the gym building) was unavoidable due to metal panel installation requirements. CTM claims that much of the damage was done during roof equipment demolition prior to metal panel installation.
- 9.16.2 Overhead Door Issues JCC  
Structural steel at the overhead doors is incomplete. Infill above lintel is required at overhead doors (10/14). Angle remediation with backer rod and caulk acceptable (11/4).
- 9.30.1 As-Builts JCC  
JCC to provide Coghlin list of ESCOA incorrect items (10/21).  
JCC reported that they do not have site as-builts (11/4).  
Yankee as-builts and O&M manuals expected within a week. Royal Steam in progress (11/18).
- 9.30.2 Kitchen Issues (See previous minutes for more info.)  
Other Issues: JCC
- Coiling doors are due in late Nov. (11/4).
  - Stove and kettle won't light. JCC to review Kitchen deficiency items (11/18).
- 10.4.1 Electrical Issues Meeting (See previous minutes for more info.)  
Assembly Sound Systems
- On order – long lead time.
- RFIs: Coghlin reports that RFIs issued in September have not yet been answered. LPA has no records of these RFIs. JCC to review status. (12/16)
- 12.2.1 Punch List: JCC hand delivered list of items complete on punch list. JCC to notify LPA when ready for re-inspection. JCC
- 12.23.1 Sprinkler System Issues JCC
- December 20 water ran through the dry system. Fire Chief reminded JCC that the dry system must be properly cleaned to ensure that no water is left in the system. This must be done prior to the next fire alarm system test. Also, all sprinkler signage must be installed including valves. (12/23)
  - On December 21, a sprinkler line froze and burst in Vest. 320. JCC to investigate and seal any areas where air infiltration could be a problem (12/23).
  - On December 23, the Fire Chief found that the sprinkler system was not in operation and the fire alarm system was not working properly while the school was occupied. A fire watch was established until the close of school day when the system would be reset (12/23).

Shrewsbury Middle School – West  
Shrewsbury, Massachusetts

## CONSTRUCTION MEETING #107

23 December 2004

Next Meeting: Thursday, Dec. 30, 2004, 10:30am.

Meeting Minutes by: Katie Crockett

Cc: Fernand Tornaz Rob Johnson Michael Pagano Todd Manning

9710-MS/Minutes/Contractor/Construction Meeting #107.doc

**Oak Middle School  
Activity Schedule**

12/20/2004

Sitework	Activity	Schedule	Notes	Responsible
	Handicap Ramps	30-Jan	Disputed	Landworks/Frias
	Site signs	30-Jan		JCC
	6 sona tubes	30-Jan		Coughlin
	Change order to install lights	Spring '05		Landworks
	Paving	Spring '05		Landworks
	at Flagpole Island	Spring '05		Landworks
	at front of shed	Spring '05		Landworks
	running track	Spring '05		Landworks
	long jump pit	Spring '05		Landworks
	High Jump Base	Spring '05		Landworks
	75 feet of walkway to Sherwood school field	Spring '05		Landworks
	Rubberize track and High Jump Pit	Spring '05		Tracklite
	Fencing around Track and entrance to Sherwood Field	Spring '05		Steelco
	Install 2 foul line poles	Spring '05		Tracklite
	Straighten center rail at CLF gate eais end of property	Spring '05		Steelco
	Install bases at benches	Spring '05		Need to Buy/Tracklite
	Replace base collar at flagpole	Spring '05		Landworks
	Excavate electric line for ticket booth	Spring '05		Add for Landworks not for JCC
	2 Rails for stairs	12/27-12/31		Ralph's
	Pour shot put pad	Spring '05		JCC
	2 Long jump pits replaced	Spring '05		Tracklite
	Reinstall granite monuments	Spring '05		Landworks
	Paint lines on running tracks	Spring '05		Tracklite
	Paint lines parking lot SE side at front	Spring '05		Landworks
	Reinstall Bergstrom filed sign	Spring '05		Landworks
	Install HC signs and posts (5) each	Spring '05		Barfo/Need to Buy?
	Complete seeding	Spring '05		Landworks
JCC	Complete Headwalls	Spring '05		JCC



## Oak Middle School Activity Schedule

[illegible]

**Oak Middle School  
Activity Schedule**

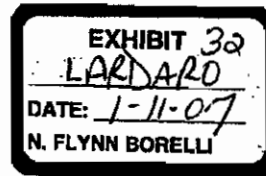
		12/20/2004			
	Clean out garage	12/27 - 12/31		JCC	
	Finish Garage Paint	12/27 - 12/31		Century	
	Covers for speakers and abandoned electric boxes	12/27 - 12/31		Ralph's	
	Install doors and frames Rm 502	22-Dec		Bristol	
	Cement in old access opening Rm 502	23-Dec		JCC	
	Pour ramp at garage door rm 367			JCC	
	Install HM frames at old louvers Rm 361	24-Dec		Bristol	
	Repair ceiling stair #12	24-Dec		JCC	
	Finish Counters Rm 331	31-Dec		Bristol	
	Finish counters at auditorium	24-Dec		Bristol	
<b>Ground floor A&amp;B</b>					
	Complete shelving storage Rm 131	31-Dec		Bristol	
	Complete glass in display cases lower "B" wing	31-Dec		Architectural Window	
	Relocate light fixtures in corridor 130	31-Dec		K & K	
	Install new access panel in stair #2	31-Dec		Ralph's	
	Install carpet transition strips	31-Dec		Brodney	
<b>1st Floor A&amp;B</b>					
	Complete curtains in nurse's area			Kreative	
	Install Marker board in room 305	24-Dec		Boston Blackboard	
	Install missing cabinet in storage room 333A			Bristol	
	Install glass shelving in media center display case	31-Dec		Architectural Window	
	Reverse frame Rm 253	31-Dec		Bristol	
	Install carpet transition strip in media center	31-Dec		Brodney	
	Complete taping around doors Rm 252A and 253	24-Dec		JCC	
	Handles for display cases	15-Jan		Bristol	
	Window sill at room 283	15-Jan		Bristol	
<b>General Notes</b>					
	Relabel and Reinstall fire doors	12/27/2004		JCC	

**Oak Middle School  
Activity Schedule**

12/20/2004

	Complete Ceiling tile	substantially complete		K & K
	Complete testing of fire alarm systems	12/27-12/29		Coughlin
	Complete change order corrections by Architectural Window	15-Jan		Architectural Window
	Install remaining door strikes	15-Jan		Bristol
	Punchlist work on building interior	substantially complete	Week ending 12/31	Various
	Testing and Balancing Heat System	substantially complete		KMD
	Control System Training	15-Jan		KMD
	Miscellaneous touch up painting	31-Dec		Century
	Correction of floor tile marks	31-Dec		BloomSouth

Message



Page 1 of 2

Julie Ciollo

**From:** Pedro Rosario [prosario@lovett-silverman.com]  
**Sent:** Monday, August 15, 2005 4:45 PM  
**To:** d\_schultz@kmd-bsmc.com  
**Cc:** 'Tony Lardaro'; 'Al Falango'; 'Robert Bullock'; 'Bill Meritz'  
**Subject:** Shrewsbury Middle School/Ratification Analysis  
**Importance:** High  
**Attachments:** KMD Rat.Analysis PMR 80405.xls

Mr. David Schultz; Mr. David Dupre:

Attached is our updated ratification analysis for your review. I have updated the analysis by adding the amounts that the Architect is holding regarding certain credits and punch list items. I will send to you the punch list items in question via fax but the most important items of work under the HVAC contract is air and water balancing and completion & commissioning of the ATC by Johnson Controls. In addition, our analysis lists the outstanding amounts due to Johnson Controls and Cleaver Brooks, and very possibly the Balancer.

As you can see and as I've discussed with you both the change order for the claims have to be placed aside in moving forward and getting KMD back to the project. As I have also stated the claims have to be reviewed by Lovett Silverman with the proper back up and documentation to validate the claims. I disagree with Mr. Dupre that these change orders are approved; there is no indication on the documents that have been submitted to us that they are. Therefore, we can not agree to KMD's demand that they be paid a substantial amount of contract funds to return to Shrewsbury and complete their HVAC work. As we stated above, the critical portion of the HVAC work is the air and water balancing and the completion and commissioning of temperature controls, which we do not know who the firm is that is to perform the work and, as acknowledged by Mr. Schultz, how much money is due to them before they return to complete their balancing work.

Therefore, we need to know by tomorrow if KMD Mechanical is going to return to the project to complete their work, have their balancer back on-site or not. There is very little time left to to perform certain contract work so that the school can obtain their certificate of occupancy. Call me first thing tomorrow morning regarding this matter.

Sincerely,

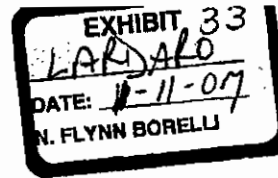
Pedro M. Rosario

Lovett Silverman Construction Consultants, Inc.

Hauppauge, New York

Telephone: (631) 979-7600; Facsimile: (631) 979-7602





**Sent:** Tuesday, August 16, 2005 8:24 AM  
**To:** Robert Bullock  
**Subject:** RE: Shrewsbury Middle School - Steelco Chain Link Fence

I will fax it there right now. Are there other fax numbers for your colleagues you copies on the message from last night?

-----Original Message-----

**From:** Robert Bullock [mailto:rbullock@lovett-silverman.com]  
**Sent:** Tuesday, August 16, 2005 8:13 AM  
**To:** cmpatten@mnplaw.com  
**Subject:** RE: Shrewsbury Middle School - Steelco Chain Link Fence

Carlotta

I am out of my office until Thursday. Would it be possible to email the contract to me or fax it to my attention at the following: (646) 390-6542. Thanks

---

**From:** Carlotta M. Patten [mailto:cmpatten@mnplaw.com]  
**Sent:** Tuesday, August 16, 2005 7:40 AM  
**To:** Robert Bullock  
**Cc:** 'Al Falango'; 'Tony Lardaro'  
**Subject:** RE: Shrewsbury Middle School - Steelco Chain Link Fence

I am faxing you the contract right now.

-----Original Message-----

**From:** Robert Bullock [mailto:rbullock@lovett-silverman.com]  
**Sent:** Monday, August 15, 2005 11:47 PM  
**To:** cmpatten@mnplaw.com  
**Cc:** 'Al Falango'; 'Tony Lardaro'  
**Subject:** RE: Shrewsbury Middle School - Steelco Chain Link Fence

Carlotta,

The attached is what you faxed me in July. I do not see a contract between Jackson and Steelco in this attachment. If you have a signed contract between Jackson and Steelco please send it to me.

What I am looking for is an executed agreement describing the full scope of Steelco's work and the original, mutually agreed to, price. I need this so I know what Jackson and Steelco agreed to in writing before the fencing work was started. From this I would be able to calculate the value of the remaining work. I do not see anything in the attached where Jackson agreed to the price that Steelco shows on their invoices (pages 5, 6, and 7 of 7) and statement (page 4 of 7). Also, I can not determine what Steelco would be doing in the future for the Balance to Finish of \$47,830 shown on Page 7 of 7. I have meetings from 9 AM to 3:30 PM and again 7PM to 9 PM. Hopefully this email better describes what we need. Sorry for any confusion.  
Thanks,

Bob Bullock  
Lovett Silverman Construction Consultants Inc.  
Cell: 717-422-7518  
Web Site: Lovett-Silverman.com

The information contained in this e-mail is confidential information intended only for the use of the individual or entity named. If the reader of the message is not the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this

communication in error, please immediately notify the sender by reply e-mail and then delete the message.

---

**From:** Carlotta M. Patten [mailto:cmpatten@mnplaw.com]  
**Sent:** Monday, August 15, 2005 9:23 PM  
**To:** Robert Bullock  
**Subject:** RE: Shrewsbury Middle School - Steeco Chain Link Fence

Bob,

I sent you the contract back in July. It seems that I am a bit confused by your email below.

Please call me tomorrow. I have a meeting from 9 to 11 but am available other than that.

[Carlotta M. Patten] -----Original Message-----

**From:** Robert Bullock [mailto:rbullock@lovet-silverman.com]  
**Sent:** Monday, August 15, 2005 2:30 PM  
**To:** cmpatten@mnplaw.com  
**Subject:** RE: Shrewsbury Middle School - Steeco Chain Link Fence

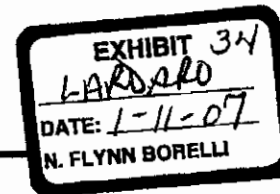
Carlotta,  
Without a contract in place between Steelco and Jackson or Standen I am not sure the draft ratification is correct. What is the scope of the remaining work? What is Steelco's value for the remaining work?  
Bob

---

**From:** Carlotta M. Patten [mailto:cmpatten@mnplaw.com]  
**Sent:** Monday, August 15, 2005 2:33 PM  
**To:** Robert Bullock  
**Subject:** Shrewsbury Middle School - Steeco Chain Link Fence

Bob,  
I am back in the office. I am writing to inquire as to the status of the ratification and my letter to you dated August 4 with a further breakdown of remobilization costs.  
Thank you,  
Carlotta Patten

Carlotta McCarthy-Patten, Esq.  
Metaxas, Norman & Pidgeon, LLP  
900 Cummings Center Suite 207T  
Beverly, MA 01915  
Phone: (978)927-8000  
Fax: (978)922-6464  
Email: cmpatten@mnplaw.com  
www.mnplaw.com



Julie Ciollo

From: Tony Lardaro [tlardaro@lovett-silverman.com]  
Sent: Thursday, August 18, 2005 8:54 PM  
To: Robert Bullock  
Subject: Re: Shrewsbury Middle School - Data required for Financial Analysis

Bob,  
What e-mails are you referring to? From your e-mail I gathered that you were going to meet with Landworks to see if they could finish the sitework and they have a lawsuit against the Surety and Jackson. If that's the case, just tell them that we've been told we can't deal with them while the case is pending.

Tony

-----Original Message-----

From: "Robert Bullock" <rbullock@lovett-silverman.com>  
Date: Thu, 18 Aug 2005 20:23:35  
To: "'Al Falango'" <afalango@lovett-silverman.com> Cc: "'Tony Lardaro'" <tlardaro@lovett-silverman.com>  
Subject: FW: Shrewsbury Middle School - Data required for Financial Analysis

Al,

I am going to cancel this meeting based on your email and Jim Peters. Should I mention to him why we are not meeting:

We are presently a defendant in a legal action brought by your company against Jackson Construction and USF&G. The underlying issue is a dispute regarding your sitework subcontract on the Shrewsbury Middle School project. If Landworks is interested in settling that legal action and resuming their work, they should communicate that desire through their counsel to Brad Carver who represents USF&G in that litigation.

From: Neal H. Matthews [mailto:Lonewolf@maine.rr.com]  
Sent: Thursday, August 18, 2005 3:35 PM  
To: Robert Bullock  
Subject: Re: Shrewsbury Middle School - Data required for Financial Analysis

Either day will be find to meet. Let me know what day will be best for you and I'll be down at 9:00am. I assume the best place would be at the school so we can go over what has to be done to finish the work.

Thank you,

Neal H. Matthews

----- Original Message -----

From: Robert Bullock

To: 'Neal H. Matthews'

Sent: Thursday, August 18, 2005 9:10 AM

Subject: RE: Shrewsbury Middle School - Data required for Financial Analysis

Neal,

I can meet with you Tuesday or Wednesday of next week. Let me know if 9:00 AM either day will work for you.

Robert J. Bullock, PE

Lovett Silverman Construction Consultants Inc.

Phone: 717-796-9595

Fax: 717-766-1715

Cell: 717-422-7518

The information contained in this e-mail is confidential information intended only for the use of the individual or entity named. If the reader of the message is not the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply e-mail and then delete the message.

From: Neal H. Matthews [mailto:Lonewolf@maine.rr.com]

Sent: Wednesday, August 17, 2005 6:07 PM

To: Robert Bullock

Subject: Re: Shrewsbury Middle School - Data required for Financial Analysis

Dear Bob,

Thank you for taking the time to talk with me. The amount of paper work I have with



Jack up is such that transmittal through e-mail or fax may not go through without some interruption. Jackson Construction Co. had all of this information and should have passed it on to St. Paul. I would like to meet with you and see if we can resolve this in a manner that would be to the advantage of St. Paul and myself. Delayed payment and non-payment started in August of 2004 by Jackson and after many months of calls to them and St. Paul I needed to protect my rights under Massachusetts law. This is the only reason that I have filed suit. I have always preferred to have been paid what is owed to me, (Landworks Creations, LLC) and complete this project. I feel that I can do this more cost effective than if you have to hire another contractor. I can make copies of all paper work and bring them with me when we meet. I will put together an overview of the complete amount owed in th!

e format you have sent to me. You may contact me with any questions or comments.

Thank you,

Neal H. Matthews

Landworks Creations, LLC

----- Original Message -----

From: Robert Bullock

To: lonewolf@maine.rr.com

Sent: Wednesday, August 17, 2005 2:42 PM

Subject: Shrewsbury Middle School - Data required for Financial Analysis

Neil,

Here is the text from the letter we send out for the Data required to get started on the ratification:

LSCC is consultant to the St. Paul in connection with the completion of work on the above referenced project. We anticipate work at the site to proceed again immediately and the job to move forward to completion as expeditiously as possible. Jackson Construction Corp will be replaced by G & R Construction, Inc. and future direction of this project will be managed by them.

Please provide the following information to start developing your ratification agreement:

- 1) Original Contract Amount.

- 2) Change Orders to the Original Contract.
- 3) Credit Change orders to Original Contract.
- 4) Value of Work performed to date or Approved Material Stored at Site.
- 5) Total Payments Received from Standen and Jackson.
- 6) Retainage Held to Date.
- 7) Outstanding Balance.
- 8) Last Invoice Paid
- 9) Last Invoice Submitted but not Paid, if any

If you have any questions or comments concerning the above or require anything further in connection with this claim, please give me a call, I can be reached at the following numbers:

Cell 717 422 7518

Fax 717 766 1715

Robert J. Bullock, PE

Lovett Silverman Construction Consultants Inc.

19 Goldenrod Drive

Carlisle, PA 17013

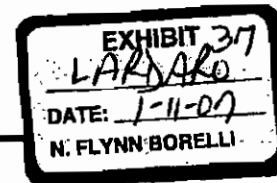
Phone: 717-796-9595

Fax: 717-766-1715

Cell: 717-422-7518

Web Site: Lovett-Silverman.com

The information contained in this e-mail is confidential information intended only for the use of the individual or entity named. If the reader of the message is not the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply e-mail and then delete the message.



Julie Ciollo

From: Bill Meritz [bmeritz@lovett-silverman.com]  
 Sent: Wednesday, September 21, 2005 10:26 AM  
 To: 'Robert Bullock'; 'Al Falango'; tlardaro@lovett-silverman.com  
 Cc: 'Pedro Rosario'; 'ajwerth'  
 Subject: RE: Shrewsbury CTC

Bob,

You are correct regarding the Owner's decision to pulverize the track and that the Surety is responsible for 33%.

At the owner's meeting yesterday, Bob Morgado indicated that the district wants the track pulverized ( change order) and in addition wants some electrical conduit work performed as no charge in consideration of the electrical damage by the G/C. I requested that Dan please provide us in writing with a proposal. Dan directed the Architect to issue documents regarding their planned changes and demands.

-----Original Message-----

From: Robert Bullock [mailto:rbullock@lovett-silverman.com]  
 Sent: Wednesday, September 21, 2005 8:56 AM  
 To: 'Al Falango'; tlardaro@lovett-silverman.com  
 Cc: 'Bill Meritz'; 'Pedro Rosario'  
 Subject: RE: Shrewsbury CTC

Under the Committed/Estimated column we included estimated costs for site work \$100,000, landscaping \$250,000, electric \$600,000, Roof \$2,000, and doors \$275,000. These are our best estimates at this time. If we believe this is not enough we should revisit the estimate for each line item.

As for the track, I believe Bill has new information that the owner will agree to a change order to pulverize the existing track, and re-grade.

The

surety would be responsible only for the original specified repair of 33% of the track area. G&R is putting together a price to pulverize the track.

-----Original Message-----

From: Al Falango [mailto:afalango@lovett-silverman.com]  
 Sent: Wednesday, September 21, 2005 9:29 AM  
 To: tlardaro@lovett-silverman.com  
 Cc: 'Robert Bullock'  
 Subject: RE: Shrewsbury CTC

I only see sub costs I'm concerned there's not enough there to cover them

-----Original Message-----

From: Tony Lardaro [mailto:tlardaro@lovett-silverman.com]  
 Sent: Wednesday, September 21, 2005 9:25 AM  
 To: Al Falango  
 Subject: Re: Shrewsbury CTC

Aren't we carrying estimated dollars in the CTC (outside the contingency amount) for these items already? -----Original Message-----

From: "Al Falango" <afalango@lovett-silverman.com>  
 Date: Wed, 21 Sep 2005 09:07:36  
 To: "'Tony Lardaro'" <tlardaro@lovett-silverman.com>, "'Robert Bullock'" <rbullock@lovett-silverman.com>  
 Cc: "'Bill Meritz'" <bmeritz@lovett-silverman.com>, <awerth@lovett-silverman.com>  
 Subject: Shrewsbury CTC

On the Shrewsbury CTC

The C/O logs lists all c/o's as pco's are they approved change orders or still pco's

Bill Meritz had mentioned a slew of potential c/o's for work done by JCC for

the town under protest, (Tony wants AJ to pick this up) should we make mention of these potential receivables even if we cant put a number on them.

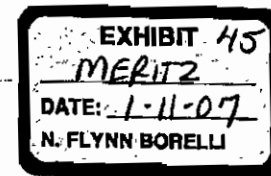
I dont think the 825k is enough for the contingency we already know we have

busts in the track work, site work , electric (major), roofs and doors (major) even though the town is holding money I still think we could possibly break the 800k mark with these, we've already spent 400k on G and R

for one month and we still dont have checks for the subs. We can try to bang

the subs but I think that we can never recover from them what we are spending.



**Robert Bullock**

**From:** Bill Meritz [bmeritz@lovett-silverman.com]  
**Sent:** Thursday, September 08, 2005 11:26 AM  
**To:** 'Al falango'  
**Cc:** 'Robert Bullock'; 'Pedro Rosario'; 'Tony Lardaro'  
**Subject:** Shrewsbury Middle School- Job Progress meeting 9/6/05

Gentlemen:

I attended the meeting at the Town of Shrewsbury offices; In attendance were:

Katie Crocket	LPA
Mike Pagano	LPA
Dan Morgano	Town of Shrewsbury
Robert Cox	Town of Shrewsbury
Bob Morel	G & R Construction
Jason Goodwin	G & R Construction
Dave Willet	G & R Construction
Duffy Lanciani	Clerk of the Works
Jack Ferguson	CTM
Rich Melanson	Griffin Electric

The following is a summary of the discussions:

Mike Pagano requested a status report pertaining to contract ratifications. I provided them with a status of each subcontractor listed by the Architect as having an impact on the project concerning finishing the work. Dan Morgano asked weather the Surety has issued checks to the subcontractors yet. I indicated that we have requested checks for many of them and others we were still finalizing their ratifications.

Dave Willet indicated that several contractors were working without ratifications.

Mike Pagano asked for a status report on Occupancy issues pertaining to Gerald Laflamme (Fire Chief) email of 8/28/05 received from John Sabonaitis. I indicated that Griffin Electric will verify that all work described in the contract documents will be provided. The Architect will review this "Wish List" from the Fire Chief and will begin preparing affidavits for issuance to the school. I also indicated that any work outside the contract will be treated as a change order. Mike Pagano will be contacting the Fire Marshall.

G & R reported the following:

**Painting:** The painter will be switching to nights next week in order to continue the painting punch list.

**Flooring:** Replacement of VCT tiles as per the punch list is complete. The Architect will reinspect. Issues remain with the blue VCT (different color). G & R has ordered a closer replacement tile for the blue for attic stock. The architect will review. The blue tile installed as per punch list work is a problem throughout the building.

**Room 485 (Phys Ed) –** G & R reported that the floor is scheduled to be completed by weeks end. Underlayment application and repair of the access frame have been completed to correct the tripping hazard. Vinyl base is back ordered. The architect will punch out this area next week.

**Boys and Girls Locker Rooms –** G & R reported that nearly all the Architect's punch list items have been completed. Upon completion G & R will have these areas cleaned and ready for the Architect's inspection next week. The handicap chair lift has been certified. G & R has requested paperwork from AFCCO.

**Electrical Work:** Griffen reported that 85% of the interior electrical work has been completed. Issues regarding outstanding fixture lenses in room 485 remain outstanding. Fixture lenses (<12) were scavenged from this room and installed in classrooms. The lenses are on back order. Griffen requested that this order be expedited via

overnight delivery. (LSCC requested a price). In any event Griffen will install temporary lenses prior to the room being completed. Griffen repaired defective wiring for pole lights in the front of the building and determined that these nonlit lights were a district problem (Bob Cox Agreed). It was determined that lights in the rear of the building do not work due to contractor damage (1 Pole light) and incomplete conduits and wiring at two other locations. Griffen will issue a cost to complete repairs. Additionally, the single pole light diagonally across from the generator will have to be powered up by digging a trench 300' to the nearest pole beneath grass. Griffen will provide a sketch to the Architect. As far as the lighting around the track, Griffen indicated that power to only 1 pole from the service panel could be determined. Griffen has concerns regarding the existing underground track lighting feeders as well as the existing service panel. I asked Griffen to issue a report based upon their findings. The issue of restrikes for the front canopy lighting was discussed. It appears that perhaps they are only needed at the front entrances. The architect will investigate this and report.

Canopy Work – Bob Morel reported that they have a contractor on board to complete the canopy once the lighting issue has been settled. The Architect questioned the frost protection wiring and Griffen indicated that the wiring is incomplete. Furthermore the Architect indicated that bug screens need to be installed at the louvers at both ends of the canopy. Jack Ferguson of CTM said that perhaps the Architect should examine the steel work at the canopy/front entrance intersection. The Architect will have their structural engineer examine the installation. Katie indicated that all rusting metal be addressed.

Windows/Window Repairs – The Architect indicated that the installed windows in the gymnasium were of the wrong type of glass (punch list). G & R is in contact with Architectural Windows concerning this matter. LSCC will follow up. G & R will review the window repair work performed by Architectural Windows. Duffy Lanciani is also reviewing the window repair work per the CCD issued as a C/O to Jackson/Architectural windows.

AFCO – G & R reported that the handicap lift has been certified. AFCO still needs to address items pertaining to the installed cafeteria/ snack bar stainless steel roll up doors. Additionally, the overhead door operator in at the left side of the maintenance garage and the door track on the left side was damaged during construction and needs replacement. G & R will be contacting AFCO.

Work Schedule – Mike Pagano raised the issue of a completion schedule for all the outstanding work. He stated that although this is a requirement, both the owner and the architect are willing to temporarily waive this requirement considering the fact that G & R have been successful in coordinating all interior work with the school principal. However, the owner needs a written schedule with completion dates as soon as possible. Bob Morel indicated that they will be on site throughout the Christmas break and will need to return in the spring to fertilize the fields.

Site Work – Bob Morel reported that negotiations are continuing with subcontractors and Bob Bullock of LSCC. The Architect indicated that the contact documents specifically indicate that temperature sensitive work can not be performed when ambient outside temperatures fall below 45 degrees. Furthermore, Bob Morel indicated that he has meetings planned with another site contractor and plans to begin work by the end of next week.

#### General Meeting Notes

##### Track Lighting

Based upon their investigation, Griffen Electric has determined that 2 four inch trunk lines each carrying 8 # 8 conductors go to two separate light poles from the existing service panel. One trunk line to the nearest pole can be electrified. The other trunk line to the opposite pole no longer exists. He one inch conduit installed between the two opposite light poles is too small to carry the necessary conductors. The existing buried conduits and splice boxes between the poles have problems. Bob Cox indicated that the wiring is indeed old and suspect and should be replaced. He asked if the Surety would be willing to install new conduits for the purpose of installing new wiring for the site lighting or perhaps negotiate a change order. This offer was summarily dismissed by Mike Pagano and Bob Morgano who indicated that the contractor was responsible for restoring all site lighting. At that moment Bob Cox left the meeting. Katie Crockett indicated that the demolition contractor caused all the damage and they expect the site lighting to be restored. Dave Willet asked about the status of the uninstalled electrical vault. The architect will investigate and review the site electrical drawings.

To summarize, issues with the site lighting abound. Griffen will produce a report for us to review. The existing equipment, conduits, and wiring may not be code compliant. Griffen has serious concerns about repairing the existing wiring and reenergizing it. We will need the architect to direct us in writing on how to proceed with respect to the contract drawings.

### Lockers

I indicated that I am still awaiting documents pertaining to change orders and credits from PENCO. Dave Willet indicated that they have already been on site working to address punch list items.

### G & R Invoices

Jason Goodwin reported that he is still preparing AIA forms for both the Surety and the owner. Katie Crockett requested that G & R submit to her a report on all items completed per her punch list for inspection purposes.

Bob Morgano reported that the Surety has yet to address direct payments by the Town as well as back charges. He explained to all that all retainage was paid to Jackson upon substantial completion (I was under the impression that substantial completion was never attained!) and that the remaining contract balance represents the value of the monetized punch list. Dan told G & R to requisition per the monetized punch list.

### Site

Dan Morgado indicated that it is imperative that the site work begin while time permits.

Mike Pagano indicated that the football field and baseball infields were still under warranty by the contractor and that they were responsible for maintenance and security.

Dan Morgado indicated that in the event that the football field could not be used, the district was prepared to transport the teams to other sites and back charge the Surety.

G & R agreed that we can work around this issue with regards to the peewee football people.

Duffy Lanciani asked the architect to provide the latest field drawings as well as all SK Drawings.

Bob Cox indicated that a school fair is scheduled for September 24, 2005 at the front lawn and requested that G & R address any safety issues.

### Tunnels

Final inspection report and sign off remain outstanding.

### Work Force

G & R gave a brief review of project manpower.

### Project Directory

Katie Crockett requested that G & R provide a complete project directory with copies sent to all attendees.

### Next Meeting

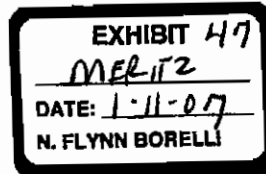
The next meeting is scheduled for 1pm at Town Hall on Tuesday, September 13, 2005.

Sincerely,  
Bill Meritz  
Lovett Silverman Construction Consultants, Inc.  
Hauppauge, New York  
Telephone: (631) 979-7600; Facsimile: (631) 979-7602  
www.lovett-silverman.com

The document(s) accompanying this transmittal contains information from the consulting firm of Lovett Silverman Construction Consultants, Inc. that is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance upon the contents of this transmittal information is strictly prohibited and the document(s) should be returned to this firm immediately. If you have received this transmittal in error, please notify this firm immediately at (631) 979-7600.







Julie Ciollo

---

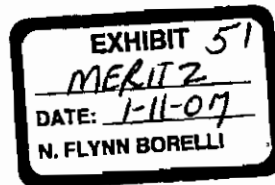
**From:** Jason Goodwin [jgoodwin@grconstruction.net]  
**Sent:** Thursday, September 15, 2005 12:58 PM  
**To:** fuller@stpaultravelers.com; wwerner@stpaultravelers.com; jpeters@stpaultravelers.com  
**Cc:** Robert Bullock; afalango@lovett-silverman.com; bmeritz@lovett-silverman.com; Bob Morel  
**Subject:** subcontractor ratifications

Good afternoon,

G&R has contacted several of the key subs needed to complete the project. They have been very cooperative up to this point; however they will not come back to the job and perform any work until they have received payment. It is my understanding that Lovett-Silvermann has all the paper work in place for these ratifications. G&R is making every effort to complete the work outlined, but it is imperative that we have these key subs on site. G&R is at a stand still in a lot of areas. Please advise on how we are to proceed. Thank you.

Jason Goodwin  
jgoodwin@grconstruction.net

G&R Construction Co., Inc.  
150 Wood Road  
Suite # 1000  
Braintree, MA 02184  
T (781) 849-9093 x102  
F (781) 849-9094



**Robert Bullock**

**From:** Bill Meritz [bmeritz@lovett-silverman.com]  
**Sent:** Monday, January 16, 2006 2:45 PM  
**To:** 'Robert Bullock'  
**Subject:** Jackson Construction "Completion Game Plan"  
**Attachments:** DOC (72).pdf

Bob, I located Jackson Construction's "Oak Middle School Game Plan". A copy is attached

It is worth noting that Frias Concrete poured the sidewalks at the front entrance (all of them)? As you know they are not included in the Committed Cost Report. They were probably a sub to Landworks.

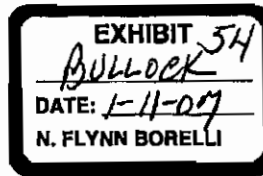
Please see page 2 Woods and Plastics – Bristol (Note J and S Door Installation Services)

Sincerely,  
Bill Meritz  
Lovett Silverman Construction Consultants, Inc.  
Hauppauge, New York  
Telephone: (631) 979-7600; Facsimile: (631) 979-7602  
Cell Phone: (631) 335-8970  
www.lovett-silverman.com

The document(s) accompanying this transmittal contains information from the consulting firm of Lovett Silverman Construction Consultants, Inc. that is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance upon the contents of this transmittal information is strictly prohibited and the document(s) should be returned to this firm immediately. If you have received this transmittal in error, please notify this firm immediately at (631) 979-7600.

Message

Page 1 of 1



Julie Ciollo

---

**From:** Al Falango [afalango@lovet-silverman.com]  
**Sent:** Wednesday, August 17, 2005 2:56 PM  
**To:** 'Robert Bullock'  
**Subject:** RE: Shrewsbury - Landworks

Dont do that if you haven't done it already

-----Original Message-----

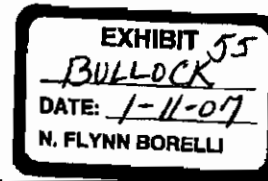
**From:** Robert Bullock [mailto:rbullock@lovet-silverman.com]  
**Sent:** Wednesday, August 17, 2005 2:33 PM  
**To:** 'Al Falango'  
**Subject:** Shrewsbury - Landworks

The president of Landworks just called me and expressed an interest in being ratified. I told him he will have to drop his law suit, but welcomed this idea and I forwarded the requirements for ratification and my contact information

10/11/2006

Message

Page 1 of 1



Julie Ciollo

**From:** Al Falango [afalango@lovet-silverman.com]  
**Sent:** Thursday, August 18, 2005 11:56 AM  
**To:** 'Robert Bullock'  
**Subject:** RE: Shrewsbury - Land works

Bob

Pull back on land works sorry for the misinformation this morning

-----Original Message-----

**From:** Peters Jr, James Michael [mailto:JPETERS@stpaultravelers.com]  
**Sent:** Thursday, August 18, 2005 10:49 AM  
**To:** Al Falango; Fuller, Russell W  
**Cc:** Robert Bullock; bcarver@hinshawlaw.com; Werner, William R  
**Subject:** RE: Shrewsbury - Landworks

We are presently a defendant in a legal action brought by Landworks against Jackson Construction and USF&G. The underlying issue is a dispute regarding their sitework subcontract on the Shrewsbury Middle School project. If Landworks is interested in settling that legal action and resuming their work, they should communicate that desire through their counsel to Brad Carver who represents USF&G in that litigation.

By copy of this email to Brad Carver, I am giving him notice of this issue.

James M. Peters, Jr.  
St Paul Travelers Bond Claim  
One Tower Square - 4 PB  
Hartford, CT 06183

Tel: (860) 954-6497  
Fax: (860) 277-5722  
Email: james.m.petersjr@stpaultravelers.com

-----Original Message-----

**From:** Al Falango [mailto:afalango@lovet-silverman.com]  
**Sent:** Wednesday, August 17, 2005 3:00 PM  
**To:** Fuller, Russell W; Peters Jr, James Michael  
**Cc:** 'Robert Bullock'  
**Subject:** Shrewsbury - Landworks

Russ

The president of Landworks called LSCC and expressed an interest in being ratified. Should we pursue this guy, I know you have issues with him.

10/11/2006



Message

Page 1 of 1

**Julie Ciollo**

---

**From:** Peters Jr,James Michael [JPETERS@stpaultravelers.com]  
**Sent:** Thursday, August 18, 2005 10:49 AM  
**To:** Al Falango; Fuller,Russell W  
**Cc:** Robert Bullock; bcarver@hinshawlaw.com; Werner,William R  
**Subject:** RE: Shrewsbury - Landworks

We are presently a defendant in a legal action brought by Landworks against Jackson Construction and USF&G. The underlying issue is a dispute regarding their sitework subcontract on the Shrewsbury Middle School project. If Landworks is interested in settling that legal action and resuming their work, they should communicate that desire through their counsel to Brad Carver who represents USF&G in that litigation.

By copy of this email to Brad Carver, I am giving him notice of this issue.

James M. Peters, Jr.  
St Paul Travelers Bond Claim  
One Tower Square - 4 PB  
Hartford, CT 06183

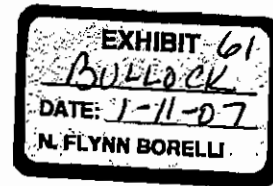
Tel: (860) 954-6497  
Fax: (860) 277-5722  
Email: james.m.petersjr@stpaultravelers.com

-----Original Message-----

**From:** Al Falango [mailto:afalango@lovet-silverman.com]  
**Sent:** Wednesday, August 17, 2005 3:00 PM  
**To:** Fuller,Russell W; Peters Jr,James Michael  
**Cc:** 'Robert Bullock'  
**Subject:** Shrewsbury - Landworks

[REDACTED]

[REDACTED]



Page 1 of 1

Message

**Robert Bullock**

From: Al Falango [afalango@lovett-silverman.com]  
Sent: Monday, July 18, 2005 8:55 AM  
To: 'Robert Bullock'  
Subject: FW: Shrewsbury

-----Original Message-----

From: Rick Noblet [mailto:moblet@lovett-silverman.com]  
Sent: Monday, July 18, 2005 8:27 AM  
To: 'Al Falango'  
Subject: RE: Shrewsbury

Hi Al,

I just got back from my F-in vacation. I don't know if you are all set on this or not but I used a contractor on a Case at a School in Lakeville/Freetown Mass. They were outstanding and were very professional with a great product. M.O. N. Landscaping Inc. Their office is in N. Dartmouth, MA. 1-508-679-3994. I worked with a Superintendent named Paul Bernardo (Cell 1-508-612-1108). He may not remember my name as I stopped by once a week or so and asked questions. We never had a first name relationship. They built soccer fields, baseball fields (4) with sodded infields, raised pitchers mounds, a practice football field, replaced shrubs and plants, watered, fertilized, and fixed a poorly installed and not working irrigation system on a very large area including changing the programmable timing system on which Zone to water next. Emanuel Bros. I also used but they have grown considerably and I am not sure how much work you have. I know they are in the North Suburbs (Chelmsford I think) of Boston. I used them on a Sewage Treatment Plant in Northbridge, MA. They did lawn, site work, shrubs, beds, flowers, and hydro mulch/seeding of settlement basins etc. I don't have a name or number but I am sure they are in information. I worked with a Rick (general superintendent) but I don't have any other information. They are good but seemed to want more volume jobs. They came in and blew out the entire job in a few days and disappeared. They did fine but I wanted them to come do some areas when they were ready (kind of piece meal) and they chose to overrun the place with people. It worked, looked good and the client was happy. They also watered every day all summer until the job was sold. Rick

From: Al Falango [mailto:afalango@lovett-silverman.com]  
Sent: Monday, July 11, 2005 12:43 PM  
To: 'Michael Melnick'; 'Rick Noblet'  
Subject: Shrewsbury

I need the numbers of some site guys that can handle a substantial amount of school site work, minor drainage, grass prep and planting etc.

Any names you have would be a big help.

4/17/2006

03/23/2004 10:27 17913441040

HARTFORD ROOFING

PAGE 02

SUBCONTRACTOR HOLD AGREEMENT  
CONDITIONAL PARTIAL RELEASE

Principal: Standen Contracting Company, Inc. Landworks  
Project: Shrewsbury Middle School Subcontractor  
Project Owner: Town of Shrewsbury, MA  
Claim No.: 04008W5041295001 Bond No.: SW5041

I (we) am (are) a subcontractor to Standen Contracting Co., Inc. on the above-named contract for the work on the above described project. A copy of the subcontract and approved change orders are attached hereto as Exhibit A and by this reference fully incorporated herein.

1. Amount of my (our) original subcontract/purchase order:	\$824,823.00
2. Changes in subcontract amount approved by <u>Standen Contracting Co., Inc.</u> :	\$ 73,221.00 *
3. Total or adjusted subcontract amount:	\$898,044.00
4. Value of work performed and/or approved material stored at job site through <u>3/1/04</u> :	\$643,325.47
5. Total payments received from <u>Standen Contracting Co., Inc.</u> :	\$493,544.60
6. Net amount due through <u>3/1/04</u> :	\$177,614.60 PD
7. Retainage on No. 4 above:	\$ 32,166.27
8. Value to be performed after <u>3/1/04</u> :	\$254,718.53

In consideration of my (our) being paid within ten days from the date of this Agreement by United States Fidelity & Guarantee or their successors or assigns (collectively Surety), the net amount of \$177,614.60 due (No. 6 above) and its agreement to pay me (us) our retainage of \$32,166.27 (No. 7 above) within 30 days of acceptance of the project by the Owner, the expiration of the applicable lien or claim period and Surety's actual receipt of the retainage from the Owner, I (we) hereby agree to perform the balance of the work amounting to \$254,718.53 (No. 8 above) as a subcontractor in accordance with the terms and conditions of the Undersigned's subcontract with Standen Contracting Co., Inc. In further consideration of the payment of the sum stated in No. 6 above paid by Surety and when the check has cleared the bank and has been paid, this agreement shall release and forever discharge Surety from all actions, causes of action, claims and demands that the Undersigned, any heirs, legal representatives, or assigns of the Undersigned may now have or arising out of any of the work performed on the above-referenced project, but only to the extent of the payment set forth in No. 6 above and through the date set forth in No. 4 above. If there are any exceptions, they are noted on the attached sheet. The Undersigned hereby agrees to perform the balance of the work as a subcontractor for the Surety or Surety's designee or assignee in accordance with the terms and conditions of the Undersigned's subcontract.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned, to the extent of the payment made hereunder, hereby assigns its claims for labor, material, or equipment rental, lien rights, stop notice rights and causes of action against Standen Contracting Co., Inc. and the Owner to Surety with the Undersigned appointing Surety its irrevocable attorney to demand payment for and enforce payment of said items, stop notices, and causes of action, including, but not limited to, bringing suit hereon, providing releases therefor, and taking all steps to perfect the same, and all at the Surety's sole discretion, election and expense.

IT IS FURTHER UNDERSTOOD AND AGREED that the agreement of Surety or its designee or assignee to pay retainage or any future payments is subject to any defenses or claims of the principal, the Surety or its designee or assignee has or may have arising out of the subcontract that exist now or that may arise in the future that entitle the Owner, the principal or Surety and/or its designee or its assignee to back charge, set off, or deduct from the retainage or any future payments any amounts for which the Undersigned may be or is responsible for. The execution of this Agreement shall not waive or estop the Surety from raising any such defenses or claims.

Page 1 of 2

MAR 23 2004 11:42

17913441040 PAGE.02

03/23/2004 10:21 17813441040

HARTFORD HOLDINGS

PAGE 03

IT IS FURTHER UNDERSTOOD AND AGREED that Surety is in the process of negotiations with the Owner on the referenced contract. If proper arrangements can be made with the Owner for takeover and relief of this project your subcontract, purchase order, change orders or agreement may be assigned to a new general contractor or construction manager. The continued use of you as a subcontractor on this project is at the sole discretion of Surety and is further conditioned upon approval by the completion contractor and/or Owner. If it is determined by Surety to either not use you as a subcontractor or assign your subcontract agreement, then any retainer held will be directed to you within 30 days after project acceptance and retentions are released by the Owner and received by Surety assuming there are no backcharges, setoffs or claims against you.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned certifies that any labor, material, and/or subcontractor furnished by the Undersigned, was actually furnished, delivered, or used in construction of the aforementioned project.

THE UNDERSIGNED FURTHER WARRANTS AND REPRESENTS AND HEREBY certifies that all just and lawful billings, accounts and/or amounts due from the undersigned and/or its subcontractors or material suppliers for labor, material, equipment employed in the performance of this contract have been fully paid in accordance with the terms and conditions of said contract(s) and that there are no amounts for which the undersigned would be responsible under the above agreement, all amounts having been fully paid and other terms of the relevant subcontract, material supply contract or purchase order having been fully complied with by the undersigned.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned covenants with Surety and the Owner that the money received hereby will be treated as trust moneys, and used to pay all persons or companies who have furnished labor and/or materials at the subcontractor's request on the aforementioned project, and that a good and sufficient release of all claims and waiver of lien will be obtained from all such persons or companies. In addition, all costs incurred by Surety because of failure to obtain such waiver and release of all claims, or arising from any breach of these covenants or promises made in this Agreement, including any attorney's fees reasonably incurred thereby, will be paid by the Undersigned.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned has carefully read this Hold Agreement and the same is signed with the proper authority as the free act and deed of said Undersigned.

DATED this 23 day of March, 2004

(Subcontractor)

By: [Signature]Title: Owner

DATED this 24 day of March, 2004

(Surety) VSE 2By: [Signature] Senior Claim Attorney  
Authorized Representative

\* Additional \$9,804.00 in potential change order for unresolved C/O work to be reviewed and negotiated if found valid by LSOC and Jackson CC.



# EXHIBIT F

<b>CIVIL ACTION COVER SHEET</b>		DOY T NO.(S)	Trial Court of Massachusetts Superior Court Department County: <u>Middlesex</u>	
PLAINTIFF(S) <u>Hermes Engineering</u>		DEFENDANT(S) <u>USP &amp; Jackson Const Co</u>		
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE <u>Rob Mettzen P.O. Box 1459</u> <u>Fram. MA 01701 5088727116</u> Board of Bar Overseers number: <u>534745</u>		ATTORNEY (if known)		
Origin code and track designation				
Place an x in one box only:				
<input checked="" type="checkbox"/> 1. F01 Original Complaint		<input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)		
<input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)		<input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)		
<input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)		<input type="checkbox"/> 6. E10 Summary Process Appeal (X)		
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)				
CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?	
<u>EOS</u>	<u>Breach of Contract</u>	<u>A</u>	( <input checked="" type="checkbox"/> ) Yes ( ) No	
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.				
TORT CLAIMS				
(Attach additional sheets as necessary)				
A. Documented medical expenses to date:				
1. Total hospital expenses				\$
2. Total Doctor expenses				\$
3. Total chiropractic expenses				\$
4. Total physical therapy expenses				\$
5. Total other expenses (describe)				\$
				Subtotal \$
B. Documented lost wages and compensation to date				
C. Documented property damages to date				
D. Reasonably anticipated future medical and hospital expenses				
E. Reasonably anticipated lost wages				
F. Other documented items of damages (describe)				
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)				
				\$
				TOTAL \$
CONTRACT CLAIMS				
(Attach additional sheets as necessary)				
Provide a detailed description of claim(s):				
<u>Failure to pay subcontractor on Public Project</u>				
				TOTAL \$ <u>624,765</u>
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT				
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."				
Signature of Attorney of Record <u>[Signature]</u>				DATE: <u>8/17/05</u>

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO:

HERMES ENGINEERING, INC.

Plaintiff

v.

UNITED STATES FIDELITY AND  
GUARNTY COMPANY and JACKSON  
CONSTRUCTION CO.

Defendants

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

VERIFIED COMPLAINT

1. Plaintiff, Hermes Engineering, Inc. ("the Plaintiff") is a Massachusetts corporation with a principal place of business at 60 Tripp Street, Framingham, Middlesex County in the Commonwealth of Massachusetts.
2. Defendant, Jackson Construction Co. ("the Defendant") is a Massachusetts business with an address of 20 Dan Road in Canton, Norfolk County, in the Commonwealth of Massachusetts.
3. Defendant, United States Fidelity & Guaranty Co. ("the Surety") is an insurance company with a place of business at 124 Grove Street, Franklin, Norfolk County, in the Commonwealth of Massachusetts.
4. The Defendant entered into a contract with the Plaintiff under which the Plaintiff agreed to perform certain construction work for the Defendant at the Hull High School in Hull, Massachusetts. ("the Project")

5. The Plaintiff is the Division 15 HVAC Contractor at the Project and is thus subject to, and entitled to, the protection and remedies of G.L. c. 149, which directs the conduct of public construction projects.
6. The Defendant agreed to pay the Plaintiff for the work performed by the Plaintiff on its behalf.
7. The Plaintiff performed its contractual obligations, providing invoices for work performed on behalf of the Defendant.
8. Notwithstanding the Plaintiff's performance and acceptance of the work, the Defendant had not paid the Plaintiff for the Plaintiff's work.
9. The Plaintiff is owed \$624,265.53 for work performed on behalf of the Defendant at the Project.
10. The Defendant failed to perform its obligations to the Town of Hull, and has been terminated from the Project; leaving the Plaintiff unpaid.

COUNT I  
BREACH OF CONTRACT  
HERMES v. JACKSON

11. The Plaintiff restates paragraphs 1-10 and incorporates them herein by reference.
12. The Defendant's failure to pay the Plaintiff for completed services constitutes a breach of the contract between the Plaintiff and the Defendant.
13. As a result of the Defendant's breach, the Plaintiff has sustained the loss of its expectancy under the contract, and has sustained incidental and consequential damages foreseeable at the time of contract formation.



COUNT II  
QUANTUM MERUIT  
HERMES v. JACKSON

14. The Plaintiff restates paragraphs 1-13 and incorporates them herein by reference.
15. The Plaintiff has provided work worth \$624,265.53 for which it has not been compensated, as demonstrated on the attached Exhibit A.
16. The Defendant has received the benefit of this work and has been otherwise unjustly enriched as a result of the Plaintiff's work.
17. The Defendant owes the Plaintiff the value of the work.

COUNT III  
BREACH OF IMPLIED COVENANTS  
HERMES v. JACKSON

18. The Plaintiff restates paragraphs 1-17 and incorporates them herein by reference.
19. The Defendant's conduct, as described herein, did breach the implied covenant of good faith and fair dealing which is contained within each contract in the Commonwealth.
20. As a result of this breach, the Plaintiff has been harmed.

COUNT IV  
BREACH OF M.G.L. c. 93A §11  
HERMES v. JACKSON

21. The Plaintiff restates paragraphs 1-20 and incorporates them herein by reference.
22. Both parties to this dispute are engaged in trade and commerce.
23. The Defendant's conduct, as described herein, went beyond mere breach of contract, to egregious and heavy-handed attempts to extort concessions and otherwise deprive the

Plaintiff of its legal rights, and to otherwise deny the Plaintiff its rights under the contracts based upon superior economic position.

24. The Defendant's conduct, as described herein, was unfair and deceptive under M.G.L. c. 93A, which proscribes this type of conduct.
25. As a result of this breach, the Plaintiff has been harmed in its business.

COUNT V  
VIOLATION OF G.L. c. 149 §29  
HERMES v. USF & G

26. The Plaintiff restates paragraphs 1-25 and incorporates them herein by reference.
27. The Defendant was bonded by the Defendant, United States Fidelity & Guaranty Co.
28. The Defendant failed to complete its payment obligations at the Project with regard to the sums owed to the Plaintiff.
29. The Plaintiff has performed its work under the Jackson contract, and is owed funds by the Defendant for the work performed.
30. The Plaintiff gave timely notice of its claim to the Surety as required under G.L. c. 149 §29.
31. The Surety has failed to make timely payment, and to otherwise comply with the provisions of c. 149 §29, which are intended to provide security to the Plaintiff for payment on public projects.
32. The Defendant has failed to pay the Plaintiff for work performed at the Project.

COUNT VI  
VIOLATION OF G.L. c. 93A and 176D  
HERMES v. USF & G

33. The Plaintiff restates allegations 1-32 and incorporates them by reference.

34. Notwithstanding that liability was reasonably clear, the Defendant has declined to make full settlement of the claim, without cause or excuse.

35. The Plaintiff has made demand for its funds, a demand which has been ignored.

36. As a result of this conduct, the Plaintiff has been harmed in its business.

WHEREFORE, the Plaintiff respectfully prays that this Honorable Court:

1. Enter judgment for the Plaintiff as pled in Counts Count I-III and ordering an award of damages in the amount of \$624,265.53;
2. Enter judgment for the Plaintiff as to Count IV, and ordering the trebling of damages and the award of attorney's fees;
3. Enter judgment for the Plaintiff as to Count V, requiring the surety to pay the sum awarded forthwith,;
4. Enter judgment for the Plaintiff as to Counts VI, and ordering the trebling of damages and the award of attorney's fees and
5. Any further relief deemed just and appropriate by this Honorable Court.

THE PLAINTIFF DEMANDS A TRIAL BY JURY

Respectfully Submitted,  
**Hermes Engineering, Inc.**  
By its attorney,

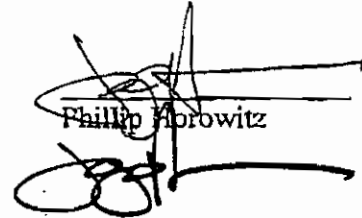
Robert N. Meltzer, BBO #564745  
PO Box 1459  
Framingham, MA 01701  
Phone: (508) 872-7116  
Telecopier (508) 872-8284

Dated: August 17, 2005

VERIFICATION

I, Phillip Horowitz, an officer of Hermes Engineering, Inc. and duly authorized to sign this document on behalf of the corporation, do hereby certify that I have reviewed the attached document, and that the facts contained herein stating the funds owed are true to the best of my knowledge and belief, and represent a true and accurate accounting of the funds due and owing to Hermes Engineering, Inc.

Signed under the pains and penalties of perjury this 4th day of August, 2005

  
Phillip Horowitz

***Hermes Engineering, Inc.******Mechanical Contractors***

60 Tripp Street • Framingham, MA 01702-8751 • (508) 270-8842 • FAX (508) 270-9146

June 15, 2005

Town of Hull  
 School Building Committee  
 7 Hadassah Way  
 Hull, MA. 02045  
 Certified Mail/Return Receipt: 7005-1160-0003-7876-0218

**DEMAND FOR DIRECT PAYMENT**

Subtrade: Hermes Engineering, Inc. (HVAC)  
 G.C.: Jackson Construction Company  
 Project: Hull High School, Hull, MA.

Hermes Engineering, Inc. has substantially completed our subcontract work on the above project in accordance with the Plans and Specifications and request payment of the entire balance due under our subcontract from the General Contractor (Jackson Construction Company), who has failed to pay. This is a written demand for the balance of \$511,277.82 due under the subcontract, a breakdown of which is as follows:

Subcontract Price:		\$1,831,750.00
Plus Change Orders:		
CO#1 Furnish & Install Insulated Dampers in Stage Area	\$10,760.00	
CO#2 Provide Gas Burners on Existing Steam Boilers	\$12,000.00	
CO#3 No Description – Back Charge	(\$ 511.00)	
CO#4 No Description – Back Charge	(\$ 640.00)	
CO#5 Disagree Mason did not do Coordination	(\$1,185.00)	
CO#6 Water Damage	\$ 580.00	
Pan for RAC-1 11/13/03 (see revised)	\$4,581.52	
Total Change Order Work Approved:		25,585.52
Total Subcontract with Change Orders:		\$1,857,335.52
Completed Pending Work:		
1. Combustion Air Louver sub. 9/26/03	\$ 1,708.56	
2. Replace Spec. Return Grills @ Stage w/ Black Iron	\$ 878.76	
3. Add End Panels to 14 Unit Vents in Phase II. Shelving Units will be 15 1/4" deep.	\$ 2,056.88	
4. Holes for Ductwork were cut by Jackson Construction (see attached)	\$ 1,078.54	
5. Remove & Reinstall Ductwork due to corrective work in Library	\$ 506.19	
6. No Gas/Frozen Coils – 1/16/04	\$ 5,032.33	
7. Modify Cabinet Unit Heaters to fit in existing conditions (Service Order #1587)	\$ 422.82	
8. Remedial work in Cafeteria (Service Order #2442)	\$ 1,562.00	
9. Replace Cabinet Unit Heaters due to Water Damage	\$ 895.00	
10. Add 10'0" to Existing Flue	\$ 3,000.00	
11. Temporary Heat	\$59,576.06	
12. Maintenance of Temporary Heat	\$18,981.00	
13. Phase I-III Coord. Dwgs. & Existing Conditions	\$44,564.04	
14. Phase I Roofing Delays	\$28,088.52	
15. Phase I Approvals of HVAC Equipment	\$30,531.00	
16. Phase I Approval of Color Selection	\$28,088.52	
17. Phase II Coord. Dwgs.	\$10,584.08	



18. Phase II Roofing Delays	\$ 3,256.64	
19. Phase II Shelving Installation Delay	\$ 4,884.96	
20. Phase II Arch./Clerk non-payment	\$25,238.96	
21. Phase II Moving delays	\$24,424.80	
22. Phase III Schedule Abatement to Coord. Dwgs.	\$11,398.24	
23. Phase III Impact Notice 2/4/04	\$20,354.00	
24. Phase III Failure to Cut 7 openings	\$ 6,513.08	
25. Phase III Unable to order Shelving	\$ 4,884.96	
26. Phase III Failure to Install Louvers	\$ 3,256.64	
27. Phase III Failure to Form & Pour Pad	\$ 720.48	
28. Phase III Roofer Delay	\$11,398.24	
29. Phase III Incorrect Blocking for Shelving	\$ 2,442.48	
30. Phase IIIA Returns & Grilles	\$ 6,965.72	
31. Phase IIIA Roofing Delays	\$13,026.56	
32. Phase IIIA On-Job Delays	\$26,098.66	
33. Demolition	(\$36,000.00)	
34. Cleaning	(\$11,790.00)	
35. Delays	(\$31,000.00)	
36. Masonry Work	(\$ 7,417.00)	
37. Frozen Sprinklers	(\$ 2,063.10)	
Total Pending Work:		\$402,418.72
Total with Pending Work:		\$2,259,754.24
Total Payments:		\$1,635,488.71
<b>Total Balance Due:</b>		<b>\$624,265.53</b>

Please make direct payment to us of \$511,277.82, the entire balance less \$112,987.71 (5% retainage), in accordance with chapter 30, section 39F of the General Laws.

Hermes Engineering, Inc.

By: \_\_\_\_\_  
Phillip E. Horowitz, President

On this \_\_\_\_ day of June, 2005, before me the undersigned notary public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

CC. General Contractor: Jackson Construction Company – 7004-2510-0000-0827-2899  
Bonding Company: U.S. Fidelity & Guaranty Company – 7004-2510-0000-0827-2905  
Architect: Architecture Involution, LLC (Ai3) -7005-1160-0003-7876-0225  
Attorney: Robert Meltzer

**SUBCONTRACTOR RATIFICATION AGREEMENT  
CONDITIONAL PARTIAL RELEASE  
AND INDEMNITY AGREEMENT**

Principal: Jackson Construction Co. Hermes Engineering, Inc.  
Subcontractor

Project: Hull High School – Hull, MA

Project Owner: Town of Hull, MA

Claim No.: 090-SC-SK353501-RG

Bond No.: SK3535

I (we) am (are) a subcontractor on the above-named contract for the work described as follows:

Describe scope of work: HVAC

Specification Section(s):

1. Original Subcontract Amount	<u>1,831,760.00</u>
2. Approved Subcontract Change Orders (C.O. No.'s 1, 2, 3, 4 and 6 – executed by both parties)	<u>29,457.72</u>
3. Subcontract Sum To Date (Line 1 + 2)	<u>1,861,207.72</u>
4. Value of work performed and/or approved material stored at jobsite (excluding punchlist work)	<u>1,861,207.72</u>
5. Retainage on Line No. 4 (equals value of open punchlist)	<u>138,885.00</u>
6. Total Earned Less Retainage (Line 4 less Line 5)	<u>1,721,342.72</u>
7. Total Payments Received from Jackson Construction	<u>1,887,348.81</u>
8. Current Payment Due (Line 6 less Line 7)	<u>23,993.91</u>
9. Value to be performed to Finish (Line 3 less Line 4)	<u>0.00</u>
10. Value of reserved claims per Subcontractor (see attached Exhibit A), does not include interest and attorneys fees to which the Subcontractor may be entitled, if any, in connection with the lawsuit pending in the Middlesex Superior Court captioned Hermes Engineering Inc. v. USF&G, Civil Action No. 05-2888.	<u>402,438.76</u>
11. Value of reserved claims / backcharges known to date (per Principal and or Surety) (see attached Exhibit B), value of reserved claims does not include claim for offset against Subcontractor for amounts which the Subcontractor fails to pay Emerson-Swan Company, d/b/a Sytec Controls for labor and materials provided to the Project at issue in the lawsuit pending in the Middlesex Superior Court captioned Emerson-Swan Company, d/b/a Sytec Controls v. Hermes Engineering, Inc. et al. Civil Action No. 05-2854. Subcontractor reserves its rights with respect to this action.	<u>(91,228.10)</u>

In consideration of my (our) being paid within fifteen (15) days from the date this Agreement is fully executed by UNITED STATES FIDELITY AND GUARANTEE COMPANY, or its successors or assigns (Surety), for the net amount of \$ 23,993.81 due (No. 8 above) and its agreement to pay me (us) our retainage of \$ 139,865.00 (No. 5 above) on a progress basis, as punch list items are completed, signed off by the Architect / Owner, and paid by the Owner, and Surety's receipt of the retainage from the Owner, I (we) hereby agree to perform the balance of the work amounting to \$ 0.00 (No. 9 above) as well as punch list work amounting to \$ 139,865.00 (No. 5 above) as a subcontractor in accordance with the terms and conditions of the Undersigned's subcontract with Jackson Construction Co., Inc. (Principal), which subcontract is hereby reaffirmed and/or reinstated. (A complete current punch list, as authored by the Owner's representatives, is attached as Exhibit C to this Agreement.) In further consideration of the payment of the sum stated in No. 8 above paid by Surety and when the check has cleared the bank and has been paid, the Subcontractor hereby releases and forever discharges Surety from all actions, causes of action, claims and demands that the Undersigned, any heirs, legal representatives, or assigns of the Undersigned may now have or that might subsequently accrue arising out of any of the work performed on the above-referenced project, excepting only the amount set forth in No. 5 above, to the extent of actual work performed, and claims as reserved in No. 10 above. The Undersigned hereby agrees to perform the balance of the work as a subcontractor for the Surety's designee or assignee in accordance with the terms and conditions of the Undersigned's subcontract with the Principal including, but not limited to, all warranties.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned, to the extent of the payment made hereunder, hereby assigns its claims for labor, material, or equipment rental, lien rights, stop notice rights and causes of action against the Principal and the Owner to Surety with the Undersigned constituting Surety its irrevocable attorney-in-fact to demand payment for and enforce payment of said liens, stop notices, and causes of action, including, but not limited to, bringing suit hereon, providing releases therefore, and taking all steps to perfect the same, and all at the Surety's sole discretion and election.

IT IS FURTHER UNDERSTOOD AND AGREED that the agreement of Surety or its designee or assignee to pay retainage or any future payments is subject to any defenses or claims the Principal, the Surety or its designee or assignee may have arising out of the subcontract that exist now or that may arise in the future that entitle the Owner, Principal, or Surety and/or its designee or its assignee to back charge, set off, or deduct from the retainage or any future payments any amounts for which the Undersigned may be or is responsible, including but not limited to the amount under No. 11, above. The execution of this Agreement shall not waive or estop the Surety from raising any such defenses or claims.

IT IS FURTHER UNDERSTOOD AND AGREED that Surety is in the process of negotiations with the Owner on the referenced contract. If proper arrangements can be made with the Owner for the completion of this project pursuant to the terms of the Surety's performance bond, your subcontract, purchase order, change orders or agreement may be assigned to a new general contractor or construction manager. In the interim, the Undersigned agrees and shall continue to perform the balance of the work for the Surety or its designee or assignee. All future billings under the subcontract shall be presented to the Surety until such time as the Surety notifies the Undersigned that the Surety has appointed a designee or assignee. The continued use of you as a subcontractor is at the sole discretion of Surety. If it is determined by Surety to either not use you as a subcontractor or assign your subcontract agreement, then any retainage held will be directed to you within 30 days after project acceptance and retentions are released by the Owner and received by Surety assuming there are not backcharges against you. At the sole discretion of the Surety or its designee or assignee, any one of them may terminate any or all of the work provided for in the subcontract prior to its completion, at their convenience. In such event, an equitable settlement for the work performed under the subcontract and this Agreement shall be made. The Undersigned shall be paid for the reasonable value of the work performed up to the time of termination for which payment has not been made, together with a pro rata portion of its profit and overhead which is directly attributable to the performed, but unpaid for work.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned certifies that any labor, material, and/or subcontractor furnished by the Undersigned, was actually furnished, delivered, or used in construction of the aforementioned project.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned covenants with Surety and the Owner that the money received hereby will be treated as trust moneys, and used to pay all persons or companies who have furnished labor and/or materials at the Undersigned's request on the aforementioned project, and that a good and sufficient release of all claims and waiver of lien will be obtained from all such persons or companies including but not limited to Emerson-Swan Company, d/b/a Sytec Controls. In addition, all costs incurred by Surety because of failure to obtain such waiver and release of all claims, or arising from any breach of these covenants or promises made in this Agreement, including any attorney's fees reasonably incurred thereby, will be paid by the Undersigned.

THE UNDERSIGNED FURTHER WARRANTS AND REPRESENTS AND HEREBY certifies that, to the extent of payments received by the undersigned, all just and lawful billings, accounts and/or amounts due from the undersigned and/or its subcontractors or material suppliers for labor, material, equipment employed in the performance of this contract have been fully paid or will be fully paid, including but not limited to Emerson-Swan Company, d/b/a Sytec Controls.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned will indemnify the Surety and its General Contractor / Construction Manager and save the Surety and its General Contractor / Construction Manager harmless from any claim, demand, lien, or right of lien which may now or hereafter be asserted by the Undersigned or any laborer, materialman, supplier, or subcontractor of the Undersigned, who asserts a claim, demand, or lien arising out of or in any manner connected with, directly or indirectly, labor performed materials furnished or any other work performed on the project. The Undersigned further agrees to defend the Surety and its General Contractor / Construction Manager in all actions arising therefrom, paying any costs, expenses, attorney's fees, and any other fees incidental thereto.

To the fullest extent permitted by law, the undersigned shall indemnify and hold harmless the Surety and its General Contractor / Construction Manager against any and all claims, losses, liability, damages, costs, expenses and attorneys fees on account of any injury or claimed injury, to persons or property, tangible or intangible, arising out of or claim to arise out of any act or omission of the undersigned, its agents, servants, employees, representatives, subcontractors, or suppliers.

**[ REMAINDER OF PAGE LEFT INTENTIONALLY BLANK ]**

Subcontractor Hold Agreement:  
Conditional Partial Release & Indemnity Agreement

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned has carefully read this Agreement and the same is signed with the proper authority as the free act and deed of said Undersigned.

DATED this 22 day of March, 2006.

SUBCONTRACTOR: Hermes Engineering, Inc.

By:

Print Name:

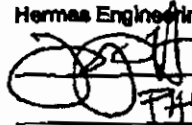
Title:

Address:

Phone:

Fax:

E-mail:

  
Philip Hrowitz  
President  
60 TRIPP ST.  
FRAMINGHAM, MA  
01702  
508(270)-8842  
508(270)-9146  
HERMES6060@AOL.COM

DATED this 20<sup>th</sup> day of April, 2006.

UNITED STATES FIDELITY AND  
GUARANTEE COMPANY

By:

Print Name:

Title:

Address:

Phone:

Fax:

E-mail:

  
Gordon Paterson

Claim Counsel

One Tower Square  
Bond Claim - 14 CZ  
Hartford, CT 06183

860-277-2409

860-277-5722

GPATERSO@stpaultravelers.com

11/15/05

Subcontractor Hold Agreement  
Conditional Partial Release & Indemnity Agreement



Subj: **Fwd: FW: HHS - Punchlist Review #5 (Mechanical)**  
Date: 6/27/2006 7:26:06 AM Eastern Standard Time  
From: Hermes6060  
To: Robmeltzer

---

Forwarded Message:

Subj: <b>FW: HHS - Punchlist Review #5 (Mechanical)</b> Date: 6/26/2006 9:59:56 PM Eastern Standard Time From: <u>jlemieux@vertexeng.com</u> To: <u>hermes6060@aol.com</u> CC: <u>tscalzo@vertexeng.com</u> , <u>pnetburn@HNSO.ORG</u> <i>Sent from the Internet (Details)</i>
---

FYI

---

**From:** Jon Lemieux -- Vertex  
**Sent:** Monday, June 26, 2006 9:57 PM  
**To:** 'Troy Randall'  
**Cc:** Debbe Bennett; Patrick Tompkins, PE; Wayne E Mattson; John Barton; tgould923@comcast.net; Mike Pellegri -- Vertex; Terry Scalzo -- Vertex  
**Subject:** RE: HHS - Punchlist Review #5 (Mechanical)  
**Importance:** High

Troy

That only addresses the items on the "G & V" tab of the spreadsheet (see revisions attached). However items were also reviewed on the Phase I, II, III and IIIa tabs as well. Please advise as those items total over \$23K together - on top of those listed below. (Please be advised that items listed as "Out of Scope" are being dealt with by CTA/USF & G directly with Hermes.)

Thank you!

Jon

---

**From:** Troy Randall [mailto:randall@AI-3.com]  
**Sent:** Monday, June 26, 2006 4:34 PM  
**To:** tgould923@comcast.net; Mike Pellegri -- Vertex; John Barton  
**Cc:** Jon Lemieux -- Vertex; Debbe Bennett; Patrick Tompkins, PE; Wayne E Mattson  
**Subject:** HHS - Punchlist Review #5 (Mechanical)

On Thursday, June 22nd our mechanical engineer, Wayne Mattson (Griffith & Vary, Inc.) met with Terry Scalzo (Vertex Engineering) and Phil Horowitz (Hermes Engineering) to review the mechanical (HVAC) Hull High School punchlist. As a result, the following items of incomplete work, listed by "Reference No.", have been completed and can be removed from the punchlist (Exhibit A):

**HVAC Punchlist**

8, 14, 15, 17, 18, 19, 20, 21, 30, 36, 40, 42, 48, 87, 88, 89, 91

Please let me know if you have any questions.

Thank you,  
Troy Randall

Tuesday, July 18, 2006 /